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Jura Eccleſiaſtica:

OR, THE

PRESENT PRACTICE

IN

England,

Eccleſiaſtical Courts.

SHEWING

Their Origin, Extent, Increaſe, Power, Authority and Operation, and in what Manner ſubject to, and reſtrained by, the Temporal Laws and Courts of Judicature; Eccleſiaſtical Courts what they are, how governed, and their Proceedings.

COLLECTED

From the Beſt AUTHORITIES, and Interſperſed with various NEW CASES, never before printed.

By a BARRISTER of the *Middle-Temple.*

In Two Volumes.

VOL. I.

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MVSEVM
BRITANNICVM

THE INTRODUCTION.

THE Conſideration of the many Attempts that have been made to extend Eccleſiaſtical Juriſdiction, and the many dangerous Evils that would neceſſarily attend the Succeſs of ſuch Endeavours, induced me to bring together and diſpoſe, as in the following Sheets, all the Learning I could collect, and which lay diſperſed in the Books and Records, to ſhew the true Riſe and Foundation of that Juriſdiction, and how it is bounded by the Municipal Laws of the Realm; in order to detect the Falſhood of the Claims made by ſome ambitious and encroaching Eccleſiaſticks, to the Diſhonour of the Crown, in Wrong of the Prerogative Royal, Degradation of the Common Law, to the endangering the Liberty of the Subject, and in direct Oppoſition to the true Spirit, even of the Goſpel itſelf.

The Authority and Juriſdiction contended for by ſome Churchmen and their Tools is pretended to be of Divine Right, but after the moſt diligent Search in Scripture, I have not been able to find any Foundation for ſuch Pretence. It's true the Codex Juris Eccleſiaſtici Anglicani *in particular, as well as ſome others on the Side of Church Authority, Labour hard for this Matter, but yet not ſo much as one ſingle Text*

has been, neither can, as I firmly believe, be produced to ſupport this fond Opinion; the only Authorities inſiſted on in Maintenance of this Notion by the ſaid Author is barely a Recognition in the Service of the Conſecration or ordering of Biſhops, and by a later Author Church Uſage; both or either of which if not deducible from Scripture, can never ſerve the Purpoſe; the Queſtion not being what has been the Uſage or Senſe of the Church of Rome, *or other Church or Churches under Miſtake and Error, or what Churchmen would have it, but whether this Claim be of divine Right or not; and therefore it is meer Evaſion and Jeſuitiſm to pretend to impoſe theſe Matters in the Place and Stead of Holy Writ; either you have a divine Right or not, if you have it, prove it from God's Word, from whence you pretend and can only claim it; if not diſclaim it, or be content to be eſteemed Ingrates to that Authority from whence you really have it, namely the Royal Favour and Acceptance of the Realm. If you have the Ingenuity and Gratitude to own that all your Juriſdiction is from hence, the Diſpute muſt neceſſarily fall, and all Conteſt about it ceaſe: But to claim a Power to bind the Laity, or even to oblige the Clergy, by Eccleſiaſtical Acts, other than in Matters ſtrictly and meerly Spiritual, is ſetting up a Claim contrary to Law, and almoſt infinite adjudged Caſes conſonant thereto, to the Diſhonour of the Prerogative and eminent Hurt of our Conſtitution itſelf; as it is to ſet up a* Spiritual Legislature *in Derogation and Diminution of the Prerogative Royal, and Right of Parliament, which only can give even the Acts of Convocation itſelf a general binding Quality. It is*

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little less; if any thing, than to remove all Superintendency and Authority of King, Lords and Commons, over these Persons and Matters, and to transfer them to, and place them in an inferior limited Jurisdiction, namely Convocation, who as they cannot assemble, so neither can they do any thing when assembled, without the Royal Assent and Confirmation, as both Law and Experience shew. Nay so Apprehensive hath the Crown heretofore been of even the Convocation itself abusing their delegated Power; (and I wish there were less Reason now) as to appoint Temporal Persons to sit with them, to prevent their meddling with Matters extra their Delegation, or against the Royal Will; and sometimes their Attendance has been suspended or dispensed with, for great, wise, and good Ends, which I hope our Adversaries will not have the Hardiness to deny, neither to claim a Divine Right contrary to such Royal Practice and by Consequence to impeach the same.

The Gospel of Christ *Authorizes no other Method, as I conceive, to be used,* pro salute Animæ vel Reformatione Morum, *than Persuasion and good Example; and this, as I take it, is all the Jurisdiction the Church can claim in this Matter from Scripture.*

The Command of our Blessed Saviour to his Disciples, feed my Sheep, I can make no more of, than that he thereby, requires them to dispense his Word, and Sacraments faithfully to the People.

And it's observable that when the Mother of Zebedee's *Children, with her Sons came to our Blessed Lord, and desired that her two Sons might sit the one on his right Hand and the*

other on his left, in his Kingdom, our Saviour checked the fond Desire, and gave them to understand that they knew not what they asked: He said they should indeed drink of the Cup that he drank of, and be baptized with Baptism that he was baptized with; but as to the Matter of their Petition he told them, That it should be given to those for whom it was prepared of his Father: And when the other Disciples expressed their Displeasure at this forward Request of their Brethren, after having shewn the Nature of Temporal Government, he described to them that of his own Kingdom, which was of a very different Sort from all Earthly Sovereignty, That the Rulers and Governors in his Kingdom, should not be like the Princes of the Gentiles, to exercise Dominion or Authority over their Fellows; but whosoever would be greatest amongst them, should be their Minister, and whosoever would be Chief should be their Servant, even as the Son of Man came not to be Ministered unto, but to Minister, and to give his Life a Ransom for many: He instanced to them in his own Example, That he was as one that served; and therefore if they would be great in his Kingdom, they were to be eminent Patterns of Humility, Meekness, and Resignation, and to go about through the World publishing his Gospel, and to confirm the Truth thereof by those Miracles he had done, and would enable them to do, and to seal the same with their Blood, when the Wisdom of Providence should require it: These were the Means, the Meek and Humble Jesus taught, for attaining Seats of Judicature; Scepters, and Crowns of Glory in his Kingdom.

So

So when he was queſtioned by Pilate, the Roman *Governor, about the Kingdom, the Governour had received Information, he was ſetting up, in Oppoſition, as was ſuppoſed, to* Cæſar's *Sovereignty, he freely owned it true, That he came into the World to eſtabliſh a Kingdom, but at the ſame Time he aſſured the Governor, that neither* Cæſar, *nor his Government, need be Jealous of the Kingdom he came to eſtabliſh; for that it would no Ways interfere with* Cæſar's *Temporal Sovereignty. That his Kingdom was not of this World; it was a Spiritual Kingdom, a Kingdom to be eſtabliſhed in the Hearts of his faithful Subjects, governing the inner Man, according to that Truth and Righteouſneſs he came to teach and eſtabliſh amongſt Men, whoſe Faithfulneſs was to be rewarded in the Manſions of Eternal Bliſs in the Heavens, when this World ſhould be paſſed away; ſo that our Lord and Saviour diſclaimed all earthly Sovereignty; and even Juriſdiction too, as appears ſtill further from the Caſe of the young Man's applying to him to ſpeak to his Brother to divide the Inheritance with him; whereto our Lord anſwered with this remarkable Queſtion, who made me a Judge or Divider among you?*

I have no where been able to find that our Saviour took upon him the Correction and Puniſhment of Vice, tho' he reproved it; all his Lectures were to the Reaſon and Underſtanding; but on the contrary, when the Adultreſs was brought to him with an Intent ſhe ſhould receive his Sentence, all the Correction he directed was ſummed up in this merciful Admonition, Go thy Way, and Sin no more, leaſt a worſe Evil come unto thee; here was no Excommuni-

munication, or Penance, no Commutation, or pecuniary Satisfaction making; on the contrary, I think it clear and plain, that the ſame Sinner carried away a Pardon of her paſt Tranſgreſſion, on Terms of Sinning no more.

If our Merciful Redeemer any where exerciſed an Authority or Juriſdiction, any thing like that which hath been claimed and exerciſed by thoſe who have vainly called themſelves his and his Apoſtles Succeſſors in a right Line, (though they think of nothing leſs perhaps than imitating his Meekneſs, Humility, Patience and Reſignation) I ſay if our Bleſſed Lord and Saviour may be any where ſaid to have exerciſed ſuch Authority, I conceive it muſt be in overturning the Tables of the Money-Changers and thoſe that ſold Doves, &c. and turning them out of the Temple; but I no where find any formal Eccleſiaſtical Sentence againſt thoſe Money-changers, &c. neither can I diſcover what was the Penance inflicted; unleſs the turning them out of the Church amounts to an Eccleſiaſtical Excommunication, which, if admitted, would yet appear to be of a very different Sort from that of later Ages, claimed and exerciſed by ſome who have called themſelves the Church of Chriſt: *Here were no Cenſures depriving the Offenders from the Common Offices of Sacrifices and Prayers in the Temple. I cannot find that our Saviour forbad his Excommunicates, if I muſt call them ſuch, coming, as Members of the* Jewiſh *Church, into the Temple to diſcharge their Religious Duties; and though this Act might amount to a Prohibition not to come there again for the Exerciſe of their Profane Occupation; yet here was no Excluſion from Church Communion, no delivering over to*

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the Devil; and as our Bleſſed Lord exerciſed no ſuch Power himſelf, I can no where find he gave his Apoſtles any ſuch Authority: Their ſole Commiſſion being, to the beſt of my Apprehenſion, to go and Preach to all Nations baptizing them in the Name of the Father, Son and Holy Ghoſt, and even thoſe who received them not, were not, by any Rule of his, as I can collect, to be anathematized, or otherwiſe dealt with according to a later Church Diſcipline; but on the Contrary, in ſuch Caſe, the Diſciples were only to ſhake off the Duſt from their Feet, and turn from them, which in my beſt Senſe of this Scripture was to leave them as they found them.

In the Time of the Apoſtles and Primitive Chriſtians the Church had no Power whatſoever even of Divorce, Separation, and Baſtardizing the Iſſue, though the Marriage was never ſo inceſtuous, (and theſe more properly than any other Matters are ſaid to belong to Church Cognizance) for thoſe, as ſays a Learned Chief Juſtice, were Acts of Juriſdiction and Coercion, and could not be done but by the Power of the Laws, to which the Parties were Locally ſubject; the only Power the Apoſtles and Church had, was what St. Paul *exerciſed, and what that was, appears from* 1 Cor. 5. *It is reported there is Fornication among you, and ſuch Fornication as is not ſo much as named among the Gentiles, That one ſhould have his Father's Wife; yet all St.* Paul *did was to warn the Corinthians from Communication with ſuch an one, or in other Words, to warn them againſt keeping ſuch wicked Company, which was no more, I dare believe, than every ſober Chriſtian would do, even in this degenerate Age, to re-*

1. Cor: 5. 1.

frain and warn their Families and Friends from holding Correſpondence with notoriouſly abandoned Sinners. St. Paul *neither annulled the Marriage, nor illegitimated the Iſſue, he neither adjudged the Offender worthy of Death, or otherwiſe puniſhed him, but left the ſame to the Civil Power; and indeed among the* Hebrews *there was no Divorce for Inceſt, but the Marriage was abſolutely void, and the Inceſt was puniſhed as though the Perſons had not been married, from this Caſe it's plain no Sentence could alter the Matter, the Marriage was void, and ſo muſt remain notwithſtanding the Prieſt's Opinion to the Contrary, and the Marriage was ſo far from Excuſing or Mitigating the Offence that it greatly aggravated it; by making Religion a ſtalking Horſe to countenance Inceſt.*

Having thus cleared the Point, That the Church neither from Chriſt, nor his Apoſtles, either by Expreſs Commiſſion or by Example, derived any divine Authority to the Exerciſe of Spiritual Diſcipline, it muſt neceſſarily follow that the ſame is of Human Inſtitution; and that either as founded in Right, of the Indulgence of Princes and Conſent of the People, or as founded in Uſurpation, Tort and Oppreſſion, by the Incroachment of artful and deſigning Churchmen. As to theſe, as the Favour and Conſent of Temporal Princes and their People have allowed to Church-men ſuch Authority, they have, therefrom, a Right to exerciſe the ſame, ſo far as the ſame has been ſo indulged to them, and no further; but when they exceed theſe Bounds their Foundation muſt needs be in Uſurpation and Wrong.

But to come home to our own Caſe, it is over and over ſettled by the beſt Authorities in the Books,

Books, That the Laws of Holy Church are not of Divine Right, but only have their Foundation in the Allowance of Princes and the Acceptance and Use of the People, and not from any Authoritative Force in themselves.

The Laws of Popes, *Councils, or Synods, are of no Effect here, further than they have been received, and those which have not been received are of no more Force or Avail here in these Realms, than the Laws of* Greece *or* Utopia; *they are meer Nullities, and if any of them have been used and exercised among us, the same has been by Church Usurpation, and are so many Instances of Church Tyranny, but no Argument of their Legal Force; as they were never received as Laws of the Realm. This as hath been observed by the Learned Author of the Examination of the Scheme of Church Power laid down in the Codex, is evident from many Canons of the Church, which never were received here at all, as well as from others which have only been partially or in Part received, and that under such Constructions and in such restrained Sense as the Wisdom of the Nation has thought fit to receive them in, and which was some times in Senses very different from the Intention of the Makers of such Canons and Constitutions, which could not have been, had such Canons and Constitutions had a binding Quality in themselves on all Nations: Nay it is observable that the Canons of our own Church, at this Day, only bind those who are Parties and consenting to them. And that the Sentiments of our Ancestors were of a Piece with those we now maintain in this particular. It is to be observed that both the King and People of these Realms even in all the*

Days of Popery here, though they were Papiſts and as ſuch embraced the Vulgar Errors and Superſtitions of the Church of Rome; *yet as appears from the Statutes of* Præmunire, *and many other undeniable Authorities, they could by no Means digeſt the Novel Doctrine of the* Pope's *Supremacy, and tranſcendent Authority over Kings and their People; they abhorred his Scandalous Pretence to a Power to depoſe Kings, and to diſpoſe of their Crowns, to diſcharge Subjects from their Allegiance, and to overturn the Laws and Rights of the Nation, at the Will of that Impoſtor; and in Conſequence of ſuch Perſuaſion, in all the Ages of Popery, as well as ſince, they have oppoſed his Uſurpations, though the ſame were too often backed by the diſloyal Clergy, who laboured hard for their own Exemption from Temporal Juriſdiction.*

Nay that Popes *themſelves did not always and originally pretend to any ſuch Power over Kings and Nations, it is to be noted, that long before the Conqueſt* Eluther: *The Biſhop of* Rome *wrote to* Lucius *the* Britiſh *King, ſtiling him God's Vicar within his own Kingdom, which that* Pope *could not conſiſtently have done had he himſelf claimed that Title, as having Juriſdiction over all Chriſtian Kingdoms and Nations. The ſame is further obſervable from the Manner in which the Church firſt began her Encroachments, which was* timide & precario, *as will clearly appear hereafter in its proper Place.* De una præſumptione ad aliam tranſivit Romanus Pontifex.

In the Time of H. 3. *when it muſt be allowed the Papal Juriſdiction ran higher, and was more elevated than it hath ever been, either before or ſince, in theſe Realms,* Pope Alex-

Alexander *the third, having granted a Commiſſion to the Traitorous Biſhops of* Winton *and* Exon *to inquire of the Legitimacy of* Agatha *the Mother of* Robert de Ardenna, *and if ſhe ſhould be found Legitimate, to reſtore him to the poſſeſſion of the Lands in Queſtion, being informed that the King was incenſed at this procedure, he countermanded and revoked his Commiſſion, acknowledging the Matter to belong purely to the King and his Courts, and not to the Church.*

So that there being no divine Right to be found in the Church for the Exerciſe of Spiritual Diſcipline; but that Authority which the Church ever did or at this Day lawfully may exerciſe, was and is neceſſarily, and altogether of Human Inſtitution, as hath been ſhewn, it is proper to obſerve, That the King is and always was Supreme head of the Church, and that the Popes *Claim of Supremacy here was a mere Uſurpation on the Crown and eſtabliſhed Laws of the Realm. The beſt Authorities in the Books inform us that the King always was, and that of Right, the Fountain of all Juſtice and Juriſdiction in all Cauſes whatſoever, and though he allows his Prelates to exerciſe their ſeveral Juriſdictions in Matters Matrimonial and Teſtamentary, which now may be ſaid properly to belong to them, though by royal allowance only (for it was not always ſo) yet by the Rules of the ſuperior Common Law, he ſtill hath the Superintendency over both them and their Proceedings; and of Reſtraint, and Correction too, if they preſume to act either iniquitouſly or unduely. The Statute of* Carliſle *declares the Biſhop of* Rome *uſurping the Signiory of Eccleſiaſtical Benefices here in this King-*

Kingdom, gave them to Aliens, &c. in Adnullation of the State of the Holy Church of England, *in Diſinheriſon of the Crown and all the Nobles,* &c. *of the Realm,* &c. *and in Deſtruction of the Laws and Rights of the Realm and againſt the good Diſpoſition and Will of the Founders; and therefore that Statute enacted that the ſame ſhould not then after be ſuffered; and indeed all the Statutes of Proviſors run in the ſame Stile. So the Statute of Faculties is, that the Kingdom recognizes no other Superior, under God, than the King, and that he both is, and always was, free from all Man's Laws, except thoſe made in the Realm, or ſuch as have been taken at his and his People's free Liberty, and by their own Conſent, to be uſed among them, and not as to the Laws of any foreign Prince, Potentate, or Prelate: And by the ſame Statute it is declared the Common Senſe of the Nation, and that with great Reaſon and good Equity, That the King and his Parliament, may, at Pleaſure, diſpenſe with, abrogate, amplify, and diminiſh all ſuch Laws: And the Stat.* 1 Eliz. *and other Statutes are to the ſame Purpoſe, That the* Pope *was an Uſurper, and that the Sovereignty and Supremacy was always inherent in the* Crown; *and ſo it was that the Kings and Queens of theſe Realms ever had Power to viſit, correct, ſuſpend, and deprive, or otherwiſe deal with Eccleſiaſticks, as they in their Wiſdom thought fit; and that not only in their Royal Perſons, but by their Commiſſioners, or Delegates, as well Civil (as they have often done) as by Civil and Eccleſiaſtical mixt, though no where, as I can find, has the Royal Wiſdom thought fit to do this by Eccleſiaſtical Commiſſioners or Delegates alone:*

And

And I must observe that these Statutes were not introductory of any New Law, but explanatory of the ancient Common Law. Rex est Persona Mixta & capax Spiritualis Jurisdictionis, *that is, he is a Spiritual Person as well as Civil, and so hath both Civil and Ecclesiastical Authority and Jurisdiction; and the Process and Proceedings being in the Name of the Bishop is no Sort of Argument against the Supremacy being in the Crown, though it may have occasioned some of the weaker Clergy to think better of themselves and their Authority, than they ought.*

The King in every Age before H. 8. *granted Dispensations, as* William *the Conqueror in the Case of the Abbot of* Battel, *and the* Pope's *Concurrence was held altogether unnecessary, and as our ancient Kings of* England, *of their own Authority, did, so our Kings at this Time may exempt from Episcopal Juaisdiction, grant Licenses, to be a Priest, in Matters of Faculties or Dispensations,* &c. *and before the Statutes of Dispensations, the King, and not the* Pope, de Jure, *might dispense with the Ecclesiastical Laws, and the King's Hand is not shortened, whatever some Ecclesiasticks and their Engines may insinuate, by this Statute.*

The King, by the ancient Laws of the Realm, may Visit, correct, and reform all Abuses in the Church; and so it is that he is capable of, and hath Proxies, Mortuaries, Tithes, &c. *and Mortuaries on the Death of every Bishop.*

Having thus established the Supremacy in the Crown, the next Thing shall be, over and above what has been hinted at before, to take a View of some of the many Claims of Churchmen, and of the Matters whereof they complain against

againſt the Common Law, the Temporal Courts, and our Conſtitution itſelf.

And the firſt is that as Jeſus Chriſt *himſelf inveſted the Miniſters of his Word with certain peculiar Powers for preſerving Decency and Order in Worſhip, and for ſuppreſſing all Enormities in Life and Errors in Faith. Secondly, That the Civil Magiſtrate ought not to interfere with the Clergy in the Exerciſes of theſe Powers, but ought on all Occaſions to be aſſiſting to them whenever his Aid is required. Thirdly, that the Clergy ought to be permitted to make ſuch Conſtitutions as ſhall appear to them, conducive to the Ends of their Divine Commiſſion. Fourthly, That the Power of interpreting theſe Conſtitutions and of carrying them into Execution ought to be veſted in the Clergy alone, or however in thoſe only to whom they ſhould delegate them. Fifthly, another heavy Grievance to theſe Gentlemen is, that of Exemption from Eccleſiaſtical Juriſdiction, as Appropriations, Impropriations, Donatives, free and other Chapels and Churches, and the Exempt Juriſdictions of Archdeacons, Deans, Prebendaries, and other Eccleſiaſticks themſelves, in their ſeveral Peculiars,* &c. who exerciſe Epiſcopal Juriſdiction independent of Biſhops to the great Blemiſh, as theſe Men ſay, of our reformed Church. *Sixthly, another heavy Matter of Complaint is Lay Lords, Temporal Judges and Civilians ſitting with Churchmen in the Court of Delegates; and the ſound Reaſon given is; for that Matters carried from the Spiritual Judges are not only of an Eccleſiaſtical Nature,* but are more meerly and undeniably ſo than any other; being purged from all Temporal Matter before they arrive there. *Seventhly,*

another heavy Offence to these Gentlemen is, That they have not the sole Correction of Manners and Punishment of Vice; which they would have us to know, is properly the Work of the Clergy, and that they, and they only, ought to have the Detection and Punishment thereof; because it is most likely to succeed in their Hands, and to be pursued by them; and this, as they say, is a Work which the general Frame of our Constitution hath assigned to Spiritual Hands, and which more especially belongs to the Church. And as to Temporal Penalties and other Civil Provisions, as they also tell us, they can only be made truly useful to Religion, by providing them as a further Terror and Punishment, to be called in as often as the Censures of the Church are disobeyed; so that Temporal Laws and Judges not being at the Beck of Ecclesiasticks is the eighth Grievance. And the ninth is the Abolishing the wholesome Discipline of Canonical Purgation. The 10th great Matter of Offence to our Church Worthies, is the King's exercising his Supreme and Prerogative Right of pardoning in Suits pro salute Animæ. *The 11th Matter of Complaint is that the Temporal Courts send their Prohibitions, and* Mandamus's *to these Courts and Judges, and also the still more disagreeable Doctrine of* Præmunires. 12. *These Gentlemen are not a little angry that the Laity want the Manners to allow the Presumption, That the Clergy are the best Judges, what are the proper Methods for promoting Religion and the Interest of the Church in all Kinds; how far their own Strength will carry them in that Way, and that they are the most, or in other Words, the only, proper Judges of the Assistance the Church*

Church really needs, and the ſeveral Degrees of it, and of the Methods alſo by which ſuch Aſſiſtance may be moſt effectually conveyed and applied; for if the Helps, ſay they, which the Temporal Legiſlature affords the Church happen to be unneceſſary, or to be applied in an undue Manner, they do not only do no Service; but a manifeſt Diſſervice to the Church; and if any are ſo ignorant of the Matter as to ask how? The clear Anſwer is by taking the Suppreſſion of Vice out of the Hands of the Spiritualty, whoſe proper Province it is, and who are moſt likely to purſue it, and putting it into the Hands of the Laity; whereas we are taught by theſe Doctors that the only Way to make Temporal Penalties really beneficial to Religion is to provide them as Auxiliaries, as a further Terror and Puniſhment to be called in at their Beck, or Nod when Church Sentences are diſobeyed. The 13. heavy Grievance is, That the Clergy have not Perſonal Tithes in other Towns and Places Juxta Conſuetudinem Urbis London. *And the fourteenth and laſt Matter of the Clergy's Complaint or Grievance, which I ſhall at this Time and in this Place trouble the Reader with is, That Biſhops may not Augment Vicarages by the ſingle Authority of the Ordinary.*

The firſt of theſe Grievances I conceive hath been ſo fully detected, as to need no further Animadverſion. Then as to the Second, that the Civil Magiſtrate ought not to interfere with the Clergy in the Exerciſe of the Powers they claim, but ought on all Occaſions to be aſſiſting to them, when ever his Aid is required, this too hath been very ſufficiently anſwered by the excellent

p. 9. *Treatiſe above, and made out to be one of the moſt Arrogant, weak and unjuſt, as well as moſt*

ground-

groundleſs Pretences that ever was made: To which I ſhall only add, by Way of Caution, to thoſe whom it may concern, That if holding Plea in the Eccleſiaſtical Court of Matters notoriouſly cogniſable at Law, be ſuch an Offence, as paſt all Contradiction it is, as renders both Judge and Party, liable to the Forfeiture of all that's valuable in this Life, (to wit) Good Name, Liberty, and Fortune, real and Perſonal, I cannot doubt, but they muſt needs hazard theſe dangerous Conſequences, who either Scheme the Demolition and Deſtruction of all Temporal Juriſdiction, or at leaſt make that Superior Authority and the Judges inveſted therewith at the Beck, and Subſervient to the Command and Direction, and meer Miniſters to every petit inferior Judge of every little Eccleſiaſtical Court, to be called in ſo often as ſuch leſſer Judge may idly think his Authority contemned.

Then to conſider the third Claim, that the Clergy ought to be permitted to make ſuch Conſtitutions as ſhall appear to them conducive to the Ends of their divine Commiſſion, I conceive the firſt thing neceſſary for theſe Gentlemen for the ſettling this ſo eſſential Point, ſhould be to ſhew what this Commiſſion is, the Scripture eſtabliſhing it, and that they have a ſettled, certain, uniform, and unerring Appearance, of what is conducible to ſuch End, till which done, ſince Infallibility is out of Faſhion, its not poſſible to know whether what appears to them conducive to ſuch End, be really ſo or not, &c. and it's by no Means adviſeable to yield ourſelves up to the Governance of Sounds we cannot underſtand; but whatever may be the Meaning of this Commiſſion, in my Apprehenſion it cannot be, by any means, to tyranize

over the Conſciences of Men, and to puniſh them for not making Compliances their Conſciences will not allow them to make; but by good Example and Preaching (unleſs they can work Miracles) to enforce the Doctrine of Chriſt; *if more than this is contended for, it exceeds, as I conceive, their Divine Commiſſion; and therefore they ought not to have Power to make Conſtitutions conducive to ſuch End under any Pretence; and the Pretence of Divine can only ſerve to aggravate the Iniquity of the Claim. If the Pretence be that they ought to have the ſole Power of making Conſtitutions as of Human Inſtitution, then the Claim is unreaſonable; becauſe the Fountain from whence that Human Commiſſion flowed, is the proper and only Judge of the Meaſure of the Authority it intended to delegate to the Inferior Juriſdictions; to contradict which, or make any claim counter thereto, would be an Attempt to deſtroy that Superintendancy the King, and his ſuperior Courts have, and of Right ought to have, over theſe Inferior, Subordinate and petit Juriſdictions; and is to the Diſhonour of the Crown, to the Diminution of the Prerogative Royal, and Derogation of the Superior Temporal Laws, and to reſolve all Eccleſiaſtical Juriſdiction into Biſhops or Convocation, and make them the final and dernier Reſort, which is contrary to known Law and our Conſtitution, and therefore, in my humble Opinion, the Broachers and Advancers of ſuch Doctrines, are not far, if any thing, out of the Statutes provided againſt Eccleſiaſtical Encroachments: And ſuch Claims, as I think at leaſt, can have no Foundation but in the Principles and Maxims of the Church of* Rome, *whoſe Fetters, praiſed*

be

be God, we have totally ſhaken off, and to which I hope, we ſhall never come in Bondage again, in any Kind or Degree whatſoever.

Their fourth Claim is, That the Power of Interpreting theſe Conſtitutions, and carrying them into Execution, ought to be veſted in the Clergy alone, or however in thoſe only to whom they ſhould pleaſe to delegate them: This, I hold, is conſequentially to null and make void the Right of Interpreting the Eccleſiaſtial Law, which is, by the Laws of the Realm, inherent in the King and his Parliament and Magiſtrates: This with the next preceding Claim is clearly ſetting up, and erecting a Spiritual Legiſlature, *upon the* Ruins, *as to this Matter, of Temporal Government: It is no leſs than an abſolute and poſitive Denial of the Prerogative Juriſdiction, and Superintendancy, a trampling upon the fundamental Temporal Laws, a ſetting the Church above its head and creating a Monſter.*

The fifth Matter of Complaint is Exemptions from Eccleſiaſtical Juriſdiction, and to this, as to ſome other of theſe Matters, I need ſay leſs in this Place, as I conceive a full and ſufficient Anſwer is given elſewhere in the following Sheets; and therefore I ſhall ſatisfy myſelf with informing the Gentlemen concerned, That all Eccleſiaſtical Juriſdiction, *was always conſidered, by the Temporal Law, as meerly of Human Inſtitution, and that the Crown in all Ages have and ſtill may at Pleaſure erect theſe peculiar Juriſdictions, and exempt Churches, Chapels, Colleges, Hoſpitals, Schools,* &c. *from Epiſcopal Juriſdiction: Nay what's ſtill more, if the Crown (or even any private Founder) raiſe and endow theſe, they are neceſſarily exempt; and therefore to ſet up a Claim contrary to this inherent Pre-*

rogative Right in the Crown, can be no leſs than to deny the Prerogative, and, as I clearly take it, within the Danger of a Præmunire.

To me it ſeems clear theſe Livings, I mean particularly here to ſpeak of Impropriations, were put, thus exempt, into the Hands of the ſeveral Nobility and Prime Gentry in the ſeveral Countries where theſe Livings lay, for the better Support and Defence of the Reformation; as the Power, Riches, and Learning of theſe Noble and Eminent Perſonages, were thereby engaged therein, as well as a Counterballance and Check to Eccleſiaſticks: As I conceive, the Statute of Faculties was induced in great Meaſure, if not altogether, as I rather incline to think, by the ſame Conſideration, That if the Univerſities ſhould at any Time prove refractory, and refuſe the proper Degrees to the King's faithful Servants, as was, if my Memory fail me not, his Lordſhip the Preſent Biſhop of Cheſter's *Caſe, there might be other Ordinary Means of obtaining them, without having Reſort to the Prerogative Royal on every ſuch Occaſion.*

I cannot paſs this Matter, without taking Notice, that though Queen Mary *was, perhaps to a fatal Degree, fond of the Romiſh Hierarchy, and proceeded as far as ſhe thought ſafe in reſtoring the uſurped Power of the Church of* Rome, *that though the Biſhops and Clergy preſſed hard themſelves for Reſtitution of their falſely termed, Eccleſiaſtical Juriſdiction, yet they durſt not, or at leaſt did not, meddle with theſe Matters, though little Queſtion can be made but the Clergy would have been glad of ſuch Reſtitution, and the Queen as much rejoiced to have made it; but however notwithſtanding ſuch*

ſuch Diſpoſition, both in Queen and Clergy, yet it was thought convenient to let them reſt in the Hands they were, and to make an Appearance however, it was at the Requeſt of the Clergy theſe Matters might ſo remain in Manner as the then Grantees of the Crown and every of them then had the ſame by due Order and Courſe of the Laws and Statutes of the Realm, and that all who moleſted them therein ſhould incur the Danger of the Statute of *Præmunire* 16 R. 2. and ſuffer and incur the Forfeitures and Pains contained in the ſame. *Notwithſtanding which, and the many other Statutes, and Common Law, to bound the Juriſdiction of the Eccleſiaſtical Courts, and notwithſtanding this Acquieſence of a Popiſh King, Queen, and Clergy, we have had ſome, who have called themſeves Proteſtant Clergy, who have ſo far outgone the very Papiſts themſelves, as to arraign and make very unjuſt Cavils at the Crown's Exerciſe of its juſt and rightful Authority of erecting theſe Exempt Juriſdictions, and of making Churches and Chapels Exempt, and authorizing others ſo to do; and think themſelves moſt hardly dealt with, that the Crown will not quit Claim to this Power, and the Crown and Laity give up, or rather reſtore (as they arrogantly and falſely affect to call it,) theſe Livings to the Clergy, or at leaſt put them under Epiſcopal Juriſdiction, that the Clerks thereof, as I ſuppoſe, and I apprehend not without good Reaſon, might be Tools of Church Power, rather than diſcharge their faithful Services, to their ſeveral Lords and Maſters, of Right due and owing.*

+ See p. 393. & 396.

But however they ſeek groundleſs Quarrels with the Crown, Prerogative, and Laws, and

with the whole Body of the Laity, it's not a little unlucky, nor a little weak, methinks, they cannot agree among themſelves, but that there ſhould be Schiſms and Diviſions in their own Body about the Matter of Eccleſiaſtical Juriſdiction.

If the Juriſdiction of the inferior Clergy exerciſed in their ſeveral inferior Peculiars, as to Common Law, yet independent as to Epiſcopy, be to the great Blemiſh of our reformed Church as is inſiſted on the one Hand; *then the inferior Clergy exerciſing ſuch Juriſdiction may poſſibly be guilty as is charged againſt them; but if they have a good Right to the Exerciſe of ſuch Juriſdiction, as they in Fact do daily claim, then the Charge is unjuſt, and injurious to ſuch lawful Juriſdictions; which leads me to conſider which of theſe Pretences are right, ſince they cannot both ſtand together; and as to the former it has not, in my Opinion, ſo much as the Appearance of any Right on it's ſide; as it's notoriouſly untrue, that theſe peculiar or exempt Juriſdictions are to the great Blemiſh of our reformed Church; for as the Crown is the Fountain of all Juriſdiction whatſoever, the Biſhops nor even the Convocation cannot have, as is clear they have not, any Power, Authority, or Juriſdiction whatſoever, but what flows from thence; and as the Authority of Biſhops extend not to theſe Peculiars, they have no Power in or over them; and if that be ſo, then the ſame Head or Fountain had good Authority, and lawfully hath beſtowed theſe exempt Juriſdictions, and that with great Wiſdom and Prudence, though the Advocates on the other Side, have the Countenance to impeach the Wiſdom of the Crown herein, by charging it with*

with the Commiſſion of theſe Acts to the great Blemiſh of our reformed Church. p. 16.

The ſixth Matter of Offence to our Church Gentry is Lay Lords, Temporal Judges, and Civiliaus, ſitting with Churchmen in Courts of Delegates, and the Reaſon given why this ought not to be is; for that Matters carried from the Spiritual Judges are no only of an Eccleſiaſtical Nature, but are more meerly *and undeniably ſo than any other*; being purged from all Temporal Matters before they arrive there.

This is fully anſwered by the Learned Author above; and therefore I ſhall only make the following Remark upon it, That this Pretence ſeems to me, and I dare be confident muſt do ſo to every other Perſon, who gives it its due Conſideration, compoſed of divers Errors, of which to mention only one, I conceive, that theſe Matters cannot be more meerly *and undeniably of Eccleſiaſtical Nature than any others,* as being purged from all Temporal Matters; *for that each Cauſe remains as it was in its firſt Inſtitution or Commencement as a Suit, and is not in the leaſt* Spiritualized or refined by paſſing thorough the Furnace of the Biſhop's Court; *and if this were not ſo, it could not be, with any propriety, ſaid to come before the Delegates by Appeal; but muſt needs be an Original Suit, as being another than that which was in the inferior Court; and to be the Original Cauſe tranſmitted, it muſt be cloathed with all the ſame Circumſtances to a Tittle, elſe it is not the ſame, neither can the Delegates judge whether the inferior Court, from whence it is removed, were regular and right in their Proceedings and Sentence or not; and therefore, as* p. 9.

I clearly take it, it cannot be true to ſay theſe Matters are more meerly *of Eccleſiaſtical Nature than any others, or than they were before, and whilſt in the inferior Court,* or that they are purged from all Temporal Matters.

But for God's ſake why muſt the Clergy needs have this Supreme Judicature in Cauſes Eccleſiaſtical, contrary to all Law and Reaſon, in their Hands ſole? Experience of their wild Claims, and Lame Defence of them, as well as other Matters, ſufficiently convince us, that they are not more eminently Qualified, however they may dream of their own Abilities, than either Lay Lords, Temporal Judges, or Civilians; and indeed I have the Charity to believe, that few of them have the Arrogance to pretend it.

The fitneſs of Temporal Lords is ſuch that it is very well known we have Temporal Peers inferior in Skill and Knowledge in our Laws, to few profeſſed Temporal Lawyers, and perhaps to none of the Profeſſors of the other Laws in their own Way; The fitneſs of their Lordſhips the Temporal Judges is too well known to want any Defence, and I am very well convinced there are many Gentlemen among the Profeſſors of the Canon and Civil Law exceedingly well Qualified to aſſiſt in Courts of Delegates; and tho' I will not preſume, as not being acquainted with them, to Queſtion the Qualifications of the Clergy for Seats in theſe Places; yet I crave Leave to obſerve, That they ordinarily judge in their own Courts (which are inferior to the Delegates) by Civilians, and tho' I may think it an Happineſs they do ſo, yet I will not pretend abſolutely to aſſign the Reaſon, which they themſelves can beſt tell; yet, if I

may

may be allowed to throw in my Conjecture, I incline to think it may be, at leaſt ſome Part of the Reaſon for this Uſe and Practice, that they at leaſt ſome Times, conceive themſelves better Judges by theſe Deputies than in proper Perſon; as Civilians have made theſe Matters their proper Study, and have been brought up in the Knowledge of them, whilſt they, the Clergy, have been wholly given up to the more important Buſineſs of ſaving Souls, and acquiring proper Knowledge to that great End.

The 7th Thing which gives Offence to the Men of Holy Church is, That they have not the ſole Correction of Manners and Puniſhment of Vice, which they Claim as more properly the Work of the Clergy; becauſe, as they ſay, they, and they only, ought to have the Detection and Puniſhment of all Manner of Vice whatſoever; and this is their Infallible Reaſon, becauſe it is moſt likely to ſucceed in their Hands, and to be purſued by them; and this as they tell us (which is more than we either knew before, or even now can admit) is a Work which the general Frame of our Conſtitution hath aſſigned to Spiritual Hands, and which more eſpecially belongs to the Church; and that as to Temporal Penalties, and other Civil Proviſions they can only be made truly beneficial to the Church and Religion, by providing them as Auxiliaries or as a further Terror and Puniſhment to be called in as often as the Cenſures of the Church are diſobeyed.

I ſhall not here loſe Time to examine the fitneſs of any of this Claſs for Inquiſitors Eccleſiaſtick, or Maſters of Houſes of Correction, neither whether theſe are only ſo many bare Aſſertions, or ſo many Truths or otherwiſe, but

proceed

proceed to inform the Reader that the eighth heavy Complaint of these Gentlemen is, that the Temporal Laws are not subservient to them, and that the Temporal Judges are not at their Beck; and more meerly, *to the enforcing Ecclesiastical Censures, their Ministers, and the 9th Matter of Offence to these Gentlemen is the abolishing the* wholesome *Discipline of Canonical Purgation.*

These last Grievances being fully answered and sufficiently detected by the Learned Author of the Examination, I shall satisfy myself with informing our Clergy, That Popham *and* Coke *Lords Ch. Just. on Demand by the Lords of the Counsel, upon a Motion of the Commons in Parliament, in what Cases the Ordinary may examine any Person* ex Officio *upon Oath, answered, having consulted the Books,* &c. 1. *That the Ordinary cannot constrain, even any Ecclesiastick, much less Temporal Person, to swear generally to Answer Interrogatories to be administred to him; but that he must have them delivered to him, that he may consider whether he ought by Law to Answer them or not.* 2. *That no Man whatsoever should be examined to his secret Opinion.* 3. *And no Layman but in Cases Matrimonial or Testamentary; for as his Lordship Lord* Coke, *observed a Civilian had said, This was* Inventio Diaboli ad destruendas Miserorum Animas ad infernum: *In a Word his Lordship says this was not only against the Ordinance mentioned by his Lordship and in* Rastal, *but also against the Custom of the Realm, and not only so but in Prejudice of the Crown and Dignity of the King, wherewith, as his Lordship justly observes, agrees* Fitzh. *The Bishop may not examine*

p. 9.

examine the Parties on their own Oaths against their Wills, to endanger their Lives, or hurt their good Names; for the intolerable Inconveniences of which the poor Martyrs in the cruel Reign of Queen Mary, *ſpirited up by a crueller Clergy, were miſerable Inſtances.*

The 10th *Thing which highly diſpleaſes and gives Offence to theſe Gentlemen, is the King's Uſe of his Supreme and Prerogative Power in pardoning Suits* pro ſalute Animæ, *which they aſſert he ought not to do; for that ſuch Offences ought not to be pardoned. Whether this is not to make themſelves Wiſer than either the Crown or the Law, I ſhall not determine, but leave to the Conſideration of thoſe affected by it: But I will take the Liberty to inform them, that theſe Suits are for the King, tho' they may be proſecuted by others; and even in Matters Matrimonial, which are more eminently of Eccleſiaſtical Cognizance than any others, as Loyalty of Marriage, General Baſtardy, and the like; yet they may not deal in theſe till they are commanded by the King and his Temporal Courts, neither may they ſurceaſe or neglect when ſo commanded; which I hope the Gentlemen of Holy Church will admit a full Proof, That theſe Courts are under the King and his Superior Temporal Courts: And nothing is more clear from the Books, than that the King may will diſpenſe with the Eccleſiaſtical Laws, and as he may diſpenſe with them, ſo he may pardon all Offences againſt ſuch Laws, where a private Intereſt is not concerned, and though a private Intereſt be in the Matter, yet though the King cannot diſcharge that, he may Pardon the Puniſhment, and his Pardon is a full Bar to all Suits* pro ſalute Animæ *or Reformation*

formation of Manners, notwithſtanding the Opinion of miſtaken Church-Men that theſe Things ought not thus to be.

Sure it would be very extraordinary to ſay the King may Pardon Felony or Treaſon, the Higheſt Offences the Law knows, and yet may not remit a Puniſhment for a brawling Word, Solicitation of Chaſtity, Fornication, or even Adultery: The firſt the Common Lawyers never had the Hardineſs to Queſtion though the Men of Holy Church have queſtioned, if not denied, the latter: But this Matter having been exceedingly well handled by the Learned Tract above, I muſt intreat the Reader, for his further Satisfaction to reſort thither. p. 9.

The 11*th Matter at which Eccleſiaſticks are grievouſly diſobliged is the Doctrine of Prohibitions,* Mandamus's *and the more diſagreeable Buſineſs of* Præmunires, *which though here I have made but one Article, I find myſelf under the Neceſſity of conſidering ſeverally.*

And firſt as to the Prohibition, it is enacted by Magna Charta, *which Lord* Coke *informs us had, in his Time, been confirmed no leſs than thirty Times, by ſubſequent Acts, That if the Eccleſiaſtical Judges incroached upon the Juriſdiction of the Common Pleas (and the Law is the ſame, as I conceive, in Caſe of their Incroachment on any other Temporal Court, down to a Court Baron or other moſt inferior) to hold Plea of a Matter againſt the Law of the Land, or any thing triable at Law, or which hath been there tried, the principal Courts of the Common Law ſhall grant a Prohibition, and if the Prohibition ſhall be contemned, the Lord Chancellor may award an Attachment to puniſh ſuch Contempt.*

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The Common Law is a Prohibition in itſelf, and he who incroaches upon it incurs a Contempt; nay ſo jealous is the Common Law of theſe Abuſes, that if a Plea be held in Court Chriſtian for a Matter belonging to the King's Court, without any Prohibition in Fact, the Party injured by ſuch Procedure may well have an Attachment upon a Prohibition; becauſe the Law is a Prohibition in itſelf; for by Law they ought to hold no Plea, but of that which belongs to their Juriſdiction: And an Injunction, in the Senſe and Judgment of the Law is a Prohibition, and ſo is a Superſedeas; and every Prohibition is as well at the Suit of the King, as of the Party; it is his Writ, and that for his Juriſdiction, and the Party may chuſe his Court, and the King may ſue for the Contempt where he pleaſeth: And the Common Law may inquire of Things done againſt its Juriſdiction; and though the Laws of England *have in ſome Meaſure, allowed the Canon and Civil Law as the Rule and Direction of their Proceedings and Deciſions in the Spiritual Courts; yet even here the Common Law has retained thoſe* Signa Superioritatis *and Superintendancy of theſe Courts, and of judging and determining whether they have exceeded their Bounds or not, and of keeping them within their due Limits, and in ſuch Caſes of iſſuing their Prohibitions,* &c. *to reſtrain them: And theſe at any time; and therefore it is, as is obſerved by* Lord Coke, *folly in thoſe who proceed there, for things whereof they have not Cognizance or Juriſdiction, or where the Temporal Courts have; and ſo it is, ſaith his Lordſhip, that the Eccleſiaſtical Courts, by their extraordinary dealing, are the Cauſe of ſuch extraordinary*

dinary Charges, and not the Law, as their Proceedings are coram non judice: *And his Lordship further observes that the King's Courts being informed, either by the Party, or any Stranger, that these Courts exceed their Jurisdiction may prohibit them, and that as well after as before Judgment and Execution: And though the Temporal Court has not Jurisdiction of the Matter in Question, yet it hath Power to limit the Ecclesiastical and all other inferior Jurisdictions, and if they abuse their Power, to Prohibit them; for the several Cases in which Prohibitions lieth, see Prohibition, and several other Parts of the following Sheets.*

As to the Mandamus *it seems to me a Piece of natural Justice, the Temporal Courts having a Superintendency over these Courts, that where these Courts either refuse or defer Justice to their Suitors, or otherwise to do the necessary Duties of their Office, as they are considered as Ministers to the Temporal Courts, they should either do the Business for them, (but that not as their Ministers, but as having such Power;) or else that they send their Writs Mandatory to them requiring and* commanding *them to do their Office; and hereto I humbly conceive the Temporal Judges are bound by their* Oaths.

As to the third Matter being that of Præmunire, *I shall not here misspend the Readers Time with saying much of my own upon it; as I conceive it fully and clearly shewn in the following Sheets: Yet I cannot pass my Lord* Coke's *Complaint, That in his Time Ecclesiasticks, and particularly Dr.* Cousins, *and Dr.* Ridley, *would have obtruded upon the World, That by the* Stat. 1. Eliz. *all Ecclesiastick Power being annexed to the Crown, and the Ecclesiastical*

Courts and Judges determining by those Laws, and they being the King's Laws; therefore no Præmunire *lies against any Spiritual Judge for any Cause whatsoever, and some others of the same Class say 1st, That when the Statutes of Provisors were made, the* Pope *had usurped Ecclesiastical Jurisdiction, though it always belonged to the Crown; and therefore the King having resumed his Supremacy, is as well* de facto, *as* de Jure, *Supreme Head, as well Ecclesiastical as Temporal; so the Causes being changed, the Law is so too.* 2. *Another Argument they draw from the Conclusion of the Writ of* Præmunire, in Domini Regis Contemptum & Præjudicium dictæ Coronæ & Dignitatem suam, Læsionem & Exheredationem manifestam & contra Formam statuti; *and that, say they, which is now united to and derived from the Crown, cannot be said* contra Coronam & Dignitatem Regis. 3. *That the King's high Commission Court is the King's Court by Act of Parliament, and the King's Patent; and therefore is not subject to a* Præmunire; *for that the Words* Vel Alibi, *cannot extend to such Court erected by Parliament: But it was resolved that, without Question, the Statutes of* Præmunire *are still in Force notwithstanding the Statute of the Queen: And that all such Proceedings as by Colour of Ecclesiastical Law before the Statute were in Danger of a* Præmunire *are so now after it; whether the Commissioners of High Commission, or other Ecclesiastical Judges; for the Statutes of* Præmunire *are by no means repealed by the* 1 Eliz. *The Crown has indeed always had* de Jure *Ecclesiastical as well as Temporal Jurisdiction; and though the* Pope *usurped upon the King's Eccle-*

Eccleſiaſtical Juriſdiction, yet it was but a meer Uſurpation; for the King cannot be put out of Poſſeſſion of any Thing belonging to his Crown: And it is to be obſerved our Kings and People too, were always jealous of any Part of the Temporal Laws being incroached upon; and therefore if the Eccleſiaſtical Law uſurped upon the Temporal, always, till of late (and as great Reaſon I conceive now as ever) it was ſeverely puniſhed, and the Offender deemed an Enemy to the King, and that in ſo heinous a Manner, that any one might have killed him, till the merciful Statute 5 Eliz. *came and took away that Severity; but ſtill it remains* contra Coronam & Dignitatem, *&c. and ſo it is when any Eccleſiaſtical Judge uſurps upon the Temporal Law; for that the Intereſt is carried* ad aliud Examen, *and this is truly* contra Coronam, *&c. and as to the High Commiſſion Court, though it be a new Court, yet the Statutes of Proviſors extend to it, being within the Word* Alibi. *Though there were ſeveral new Biſhopricks erected by* H. 8. *long after theſe ancient Statutes, yet no one ever doubted, but the Statutes extend as well to theſe new Biſhopricks, as to thoſe at the Time of the Statutes made.*

I believe truly no one ever doubted this, or varied from his Lordſhip in theſe Sentiments; yet however ſome have ſeemed to doubt; but its obſervable all thoſe have been ſuch whoſe Intereſt it was that theſe Statutes, ſo ſalutary to our Conſtitution, ſhould be ſet aſide; and ſome of them not of the niceſt Integrity: And could they ſo far have prevailed, they would have hoped, it's to be feared, by their further Stratagems, to have raiſed their Authority to the

wiſhed for height, but praiſed be God, who is truth itſelf, theſe wicked Attempts have, from the Reformation hitherto, and I hope, always will prove abortive, and terminate in the Shame and Diſgrace of the ſcandalous Schemiſts and Projectors, if not prevented by a timely Reformation and Recantation of their miſchievous Purpoſes.

The next and twelfth Thing that highly offends Churchmen is, That the Laity cannot allow the Clergy the beſt Judges what are the propereſt Methods of promoting Religion, and the Intereſt of the Church in all Kinds. How far their own Strength will carry them in that Way, and that they are not only the moſt meerly, *but only, proper Judges of the Aſſiſtance the Church really needs, and the ſeveral Degrees of it, and of the Methods by which ſuch Aſſiſtance may be moſt effectually conveyed and applied; for that, ſay they, if the Helps which the Temporal Legiſlature affords the Church happen to be unneceſſary, or to be applied in an undue Manner, they do not only do no Service, but a manifeſt Diſſervice to the Church, by taking the Suppreſſion of Vice out of the Hands of the Spiritualty, whoſe proper Province theſe Men tell us it is, &c. In Anſwer to this Article I muſt inform the Clergy, the Laity can, by no Means, allow theſe Matters.* 1. *For that they know the Clergy not generally to be ſo fit Judges as they endeavour to perſuade for the Reaſons amongſt infinite more in the Examiner abovementioned.* p. 9. 2. *For that they know Religion, by our moſt happy Conſtitution, in much ſafer Hands where it is; amongſt other Reaſons, for that the Clergy from, I had like to have ſaid fatal Experience, are*

found, not the beſt or apteſt Reformers in Religion. 3. *For that the Laity neither dare, nor have Inclination, to make themſelves wiſer than the Laws or Law-makers, but, with all Humility, ſubmit themſelves to the Superior Wiſdom of Parliament in theſe, as in all other Matters, who, they are Apprehenſive, would reſent, as they juſtly might, their contrary Behaviour; and for the ſame Reaſon the Laity hold it would be dangerous to allow the Clergy the only proper Judges, in Oppoſition to King, Lords, and Commons, of the Aſſiſtance the Church really needs, or of the Degrees and Methods of and by which, ſuch Aſſiſtance may be moſt effectually conveyed and applied; and that more eſpecially as the Legiſlature, by the many wiſe Laws they have provided, as well as the Common Laws of the Land, have already, with the greateſt Prudence fixed theſe Matters; and therefore it is, that the Laity conceive, it might be dangerous to their good Names, Liberties, and Properties to admit, and much more ſo to affirm, as the Gentlemen in the Oppoſition would have them, That theſe Temporal Proviſions are either unneceſſary, or are by the Laws directed to be unduly applied, or that the Temporal Judges, may be preſumed or ſo much as ſuſpected, of miſapplying or in any wiſe abuſing them; as hath been groundleſsly and maliciouſly inſinuated; and therefore it is alſo that the Laity cannot hold theſe Proviſions of Diſſervice to the Church, but on the contrary know, and ſo hold themſelves bound to declare, in oppoſition to all Gainſayers, that they are of moſt eminent Service to the true Intereſt of the Church and Religion, however they may thwart the ſeparate Intereſts, and by Purpoſes of Deſigning,*

ſigning, Ambitious, and avaritious Prieſts and their Miniſters. Further the Laity can, by no Means agree the Suppreſſion of all or any the Vices delegated to Church Cognizance are unduly taken out of their Hands; for that they ſee theſe Courts exerciſed in theſe very Matters againſt the Laity, whilſt it's too manifeſt many of the Vicious Clergy Eſcape Church Cenſures; and therefore the Laity muſt needs think theſe Complaints groundleſs and invidious; and for that the Right of the Clergy to detect and puniſh Vice, being only a delegated Power, the Legiſlature may at Diſcretion, Abrogate the ſame, and transfer or put it into ſuch Hands, as they in their Wiſdom ſhall think meet and proper. And ſtill further the Laity can by no Means allow that the Clergy, either have, or ought to have, or indeed can have, the ſole Cognizance and Correction of all Manner of Vice whatſoever; becauſe they very well know, they only have the Knowledge and Puniſhment of ſuch particular Vices as are, by the Temporal Law, allowed to their Juriſdiction, and that much the greater Part of Wickedneſs is, and always was, of Temporal Cognizance and Puniſhment; and therefore the Laity diſavow the bold and groundleſs Aſſertion, That the very Frame of our Conſtitution has aſſigned the Detection and Puniſhment of theſe Matters to the Spiritualty only; or that the Suppreſſion of all Vice is the proper Province of the Clergy; or That the Temporal Laws, contrary to experience and known Fact, can only be made really beneficial to Religion, by providing them as Auxiliaries or helps meet to be called in as a further Terror and Puniſhment when ever Church Cenſures are diſobeyed; *but on the contrary the Laity are perſuaded, That*

these Claims and Complaints are very injustifiable and injurious to the Constitution both in Church and State, as tending to the most Mischievous Ends, the Dishonour of the King, the Disinherison of the Crown of it's Prerogative, and the manifest Wrong of the Subject, as well as antiscriptural and setting up a Spiritual Legislature.

The 13*th Matter of Objection is, the Clergy's not being allowed (against Law) Personal Tithes in other Towns and Places* juxta Consuetudinem Urbis London. *As to this Article I conceive the Claimants would have done well to have first considered the Doctrine of Tithes, which are not* de Jure divino *due, whatever they would have us believe: If so they would have been paid to our blessed Saviour himself, who neither took, or exacted any, though he wrought a Miracle to pay Tribute; if so they would have been paid to the Apostles who never received these falsely pretended Divine Right Dues, as I can any where find in Scripture, but on the contrary St.* Paul, *who was the Apostle of the Gentiles, assures us, he worked with his own Hands that he might not be burthensome to the Churches, and he religiously boasts to one of the Churches, that he had taken nothing from them, or to such Effect; if these Payments or rather Exactions were of Divine Right, as in Wrong of both Divine and Human Law is pretended, they would have been demanded and paid in the earliest Days of Christianity; but we no where hear any thing of any Sort of Tithes, for a considerable Time after Christ and his Apostles, and in the beginning of them, they were no more than the meer voluntary Contributions of Cha-*

Charitable Chriſtians to pious and godly Uſes, namely, for the Relief of the Poor, for erecting and repairing of Churches, and the Maintenance of thoſe belonging to the Church, and were paid in to the Guardians of the Church; and though after they were paid to the Prieſt or Biſhop of the particular Church, yet he was no more than a meer Truſtee, and received thoſe Benevolences to the Uſe of the Church, in Truſt, *as to one third to the Poor, another for the Church, and the laſt third for himſelf and Church Aſſiſtants; and here tho' I do not pretend to aſcertain the Prieſt or Biſhop's proper Portion; yet I may preſume after due Deductions for his Aſſiſtants, it could not be very conſiderable; but muſt needs be very uncertain according to the fluctuating Circumſtances and Diſpoſitions of the People who compoſed his Church; and therefore could hardly be a conſtant Support to Luxury or Grandure.*

Theſe Claimants ſhould alſo have taken into Conſideration, that no Tithes whatſoever, before the Council of Lateran, were payable, other than when, where, and to whom the Laity pleaſed, who, no doubt of it, paid them to thoſe by whom they could moſt profit in Grace, and not always to their next neighbouring Prieſt or Biſhop, whether his Abilities, Application, ſound Faith, and good Life for the promoting a true Chriſtian belief and good Works, were better and more experimentally beneficial to the Ends of Religion, than any other Prieſt or Biſhop more remote: Father Paul, *in his Rights of Sovereigns, gives to underſtand, That in the ancient Church of Chriſt, thoſe who were promoted to Eccleſiaſtical Dignities, had no Patrimony, but the Glory of God, and very often the Tor-*

ments of Martyrdom; and the same Author, in another Place informs us, That the Church does not possess Temporalties by Divine Right. But say they the Scripture maintains us in this Claim, The Labourer is worthy of his Hire, *That Scripture maintains this Claim remains on the other Side to be proved. That the Labourer is worthy of his Hire I agree, but are the Clergy to be both Judge and Party? Have they a Right of Measuring other Mens Pockets? Does Scripture any where settle this Hire at a tenth of all a Man hath? Does Scripture any where say that they shall have not only a Tenth of a Man's Substance renewing, but also of the Sweat of his Brow, and the Marrow of his Bones? I apprehend, these are Points will require more Pains to establish, than the Claimants are aware of, but that be their Task, I dare not undertake it; though I would not be misunderstood or supposed to cavil at the Clergy's just Right to Tithes, as of human Institution, and of Grace given by the Favour and Wisdom of our Laws; but yet I can by no Means admit, that they are either of Divine Right, or that the Clergy can be entituled to any further or other Tithes than what, by meer human Law, they can justly Claim, but on the Contrary, I really think, that this general Claim of Personal Tithes is unjust, and little or nothing less, than intentional Robbery on the Laity, as I doubt not will appear on Examination.*

And first I think it not improper to take Notice, That these Tithes are such as come by the Labour and Industry of Men, as buying and selling, gain of Merchandize, and Handicraft, and such as Work for Hire; as Carpenters,

ters, Maſons, &c. and of theſe Tithes are not to be ordinarily paid; as being of the Labour and Induſtry of Man.

The Caſe was a Prohibition was prayed to ſtay a Suit in the Eccleſiaſtical Court for Tithes of a Fulling-Mill, wherein he ſuggeſted in the Spiritual Court that the Defendant by his ſaid Mill fulled, every Week, forty Cloths, and gained two Shillings, by every Cloth, whereof he demanded Tithes; whereas by the Law of the Land, he ought not to Demand Tithes of ſuch Mills, and on this Surmiſe only a Prohibition went; for of ſuch Things whereof the Gain comes only by the Labour of Man, no Tithes are payable, but of Things renovant, &c. Tithes are only payable of Fiſh, where ſuch Cuſtom, otherwiſe not. The ſame of Conies, and in Tithes for Honey, where was a Cuſtom, he was allowed for his Charges. Tithe cannot be of Man's Labour where it may be ſevered, as of Graſs it may, though not of Corn. It is of my Revenue, not of my Labour. The Tithes of a Mill are Perſonal Tithes, and he ſhall pay only, where is ſuch Cuſtom, the Tenth of the clear Profits, after the Charges of erecting, and all other outgoing Expences. A Perſonal Tithe can only be due by Cuſtom, and not of Common Right, they muſt eſtabliſh a Right before they can expect the Laity to pay them; and that can only be by ſhewing Immemorial Cuſtoms in particular Places, and where ſuch are ſhewn, they will be, I doubt not, cheerfully ſubmitted to as they ought; but where there is no ſuch Cuſtom I muſt needs repeat it, ſuch Demand is both unreaſonable and unjuſt, and therefore cannot without great iniquity be claimed.

And as to their Desire to have these Tithes according to the Custom of the City of London, *I am free to own my Ignorance, if there be any such general Custom for Personal Tithes in* London, *I am a Stranger to it; and there being such particular Custom or Customs in one or more Parish or Parishes in* London, *such Custom or Customers being particular and peculiar to such Parish or Parishes can be of no general Influence upon the City of* London *at large, however such particular Custom may affect those Parishes where such Customs are, no more than there being such Custom in one Parish in the County shall affect the neighbouring Parishes, or the Nation at large.*

Further as to London *in particular, it is observable that as* de Communi Jure, *no Tithes ought to be paid of Houses for Habitation, nor for Rent reserved thereon or thereout; as that Tithes are only to be paid of Things that grow or renew from Year to Year, by the Act of God, and not for Dwelling-houses, neither for Rents issuing out of Lands reserved and created only, and meerly by the Act of the Party; so it is in the City of* London *Parsons have* 2 s. *and* 8 d. *or some such like Sum in the Pound, in the Name of Tithes; but then how have they this? It appears clearly to me, not to be by Custom (though our Adversaries have so unluckily pretended, or at best insinuated) but by Decree made* Anno 1515, *and confirmed by Authority of Parliament,* 37 H. 8. *and St.* Martin's le Grand, *being out of the City, was not included in that Decree. And indeed was this Payment by Custom, though I shall not determine whether such Custom as being for more than a Tenth would be good or void, yet,*

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in my Apprehenſion, the Advocates for Perſonal Tithes would be puzled to find a Text in Divine Writ, for a Payment of more than a Tenth to Holy Church in the Name of Tithes, and therefore a Queſtion I fear may ariſe whether this Demand ſet in this View be not a little anti-ſcriptural.

But to paſs that Matter, I hold myſelf obliged in Juſtice to Truth, to inſiſt that if there be no ſuch Cuſtom in the City of London, *as hath been erroniouſly inſinuated, then it's not poſſible the Clergy ſhould have ſuch Payments* juxta *ſuch Cuſtom, and indeed if there were ſuch general Cuſtom in* London, *as is groundleſsly pretended, even that would not help the Matter, or alter the Caſe; becauſe ſuch Cuſtom would have no Influence upon other Towns and Places where is no ſuch Cuſtom; this Sort or Kind of Tithes being only due where ſuch Cuſtom is and not elſewhere, as hath been obſerved.*

But ſuppoſing for once, the Clergy could prevail in this vain and unreaſonable hope, and laying all Law and Reaſon aſleep, for God's Sake, let us conſider ſome of the many Inconveniencies, which it's to be feared, might reaſonably be expected to attend it. How muſt they be aſcertained? I can at preſent think of no likelier Way than that the Members of theſe Towns and Places to be made liable to theſe Perſonal Tithes, be, on Oath, obliged to diſcover their Circumſtances and the neat produce of their Dealings, (for I hope they would not expect them to pay Tithes for their Loſſes and Expences) whether it be by Merchandize (for it's in great Towns they chiefly chuſe to deal) other Trade or Labour; in a Word, according to this con-

conſcionable Claim, every one from the meaneſt Mechanick to the moſt conſiderable Merchant muſt fully make known theſe Matters, which, ſure, would be highly inconvenient to the private Affairs of thoſe concerned, as thereby being obliged to diſcoveries hurtful to their Dealings; To the Hurt of Credit which is the Life of Trade; and neceſſarily to the Endamaging of Trade itſelf. Not to attempt at being particular to the infinite Inlets this profound Scheme, were it once eſtabliſhed, muſt needs give to perjury, is it not to be feared the Miſer would ſwear his Subſtance and Gains leſs than in Fact they truly were? On the other Hand would not the vain and deſigning Perſons, whoſe Purpoſes or Vanity, led them thereto, ſwear themſelves worth, and their Gains more conſiderable than really they were? Surely for theſe among infinite more, and for avoiding theſe and innumerable other Inconveniences and Evils, this Iniquitous claim ought not to be complied with nor indeed made.

The 14*th and laſt Complaint of the Clergy, which I ſhall at this time reflect upon, is their Quarrel that Biſhops may not augment Vicarages* by the ſingle Authority of the Ordinary; *and this I conceive will appear as unreaſonable and unjuſt as moſt of the former; and firſt that it is againſt Law will appear under the proper Head in the following Sheets. Alſo theſe Matters are meer Lay Fees, made and transferable by Statute, as other Temporal Eſtates are at Law, and as they may be ſaid to be in the Lay Impropriators by Statute, and exempt too from all Epiſcopal or Ordinary Interpoſition, it's hard to determine whether this Claim is moſt weak or wicked; as thereby an*

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Eſtate exempt from all Church Authority is vainly attached, and not only ſo but the Wiſdom of Parliament is arraigned, and the Juſtice of the Law brought in Queſtion, by thoſe, I mean our Reverend Clergy & al', who have taken upon them, and ought to be Patterns of Obedience.

This Claim is in manifeſt Wrong of the juſt Rights of the Laity, in of theſe Eſtates, as it tends evidently to leſſen the Value of them, for which a valuable Conſideration was actually and bona fide *paid, as Mr.* Juſtice Ventris *& 1 & 2* Mod. *obſerve; for that the Rectory being in the Hands of a Lay Parſon is become Lay Fee; and therefore may not be ſubject to Sequeſtration,* &c. *for if it ſhould, as the Court obſerved, the next Step would be, that Biſhops would increaſe Vicarages upon them; when in Lay Hands as well as when in the Hands of Eccleſiaſtical Corporations, which would leſſen, as the Court truly ſaid, the poſſeſſion of ſuch who had purchaſed under the Acts of Diſſolution, and theſe Matters being Lay Fees as aforeſaid, the Appropriation or Impropriation is out of all Ordinary Juriſdiction, and the Remedy is now only againſt a Lay Parſon for not repairing,* &c. *and the Imperfection in appropriating, if any ſuch was, which the reſtleſs, ambitious, and injurious Part of the Clergy have often attempted to take Advantage of, will, by no Means, ſerve their Turn; as theſe Eſtates are ſo favoured in Law that at this Diſtance of Time, for the quieting Poſſeſſion, all Things are to be preſumed for them, as that at firſt all Requiſites to their Perfection was done duly, and that againſt all Appearance and even the cleareſt Evidence to the contrary of*

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any Defects. In Things of ſuch Antiquity omnia præſumuntur ſolemniter eſſe acta.

There are ſeveral other Claims of Church-Men as Injurious or more ſo, than any of the former, and which ſhew the Tempers of theſe Men, and ſo neceſſarily challenge Animadverſion, as their Thirſt of having the Supremacy in Eccleſiaſtical Matters reſolved into their Eccleſiaſtical Legiſlature, *or in plain* Engliſh *Convocation; or what is more unreaſonable, if any Thing can be ſo, into a Committee of Biſhops; but as the above with ſeveral more of the like Sort, have been fully detected and expoſed by the Learned Treatiſe above, and are* p. 9. *alſo ſpoken to hereafter, and as to treat of them ſeverally would ſwell this greatly beyond the Ordinary Size of Introductions, I ſhall defer the further Conſideration of them, and cloſe with a ſingle Obſervation, on their Attempts, when other Efforts have failed, to raiſe Jealouſies between the Crown and the Laity, in hopes in the Conteſt, themſelves to carry off the Prize, it is an Obſervation of Lord* Coke's.

That in Mich. Term. 5 Jac. *upon* Sunday 10 Nov. *the King upon Complaint made to him by* Bancroft *Archbiſhop of* Canterbury, *concerning Prohibitions, was informed, That when Queſtion was made of what Matters the Eccleſiaſtical Judges have Cognizance either upon the Expoſition of the Statutes concerning Tithes, or any thing elſe Eccleſiaſtical, or on the Stat.* 1 Eliz. *concerning the High Commiſſion, or in any other Caſe where is not expreſs Authority in Law, the King may decide it himſelf in his Royal Perſon, and that the Judges are but the Delegates of the King, and that the King may take what Cauſes he ſhall pleaſe to determine,*

mine, from the Determination of the Judges, and determine them himself. And, as the Archbishop said, this was clear in Divinity that such Authority belongs to the King, by the Word of God in the Scripture. *To which it was answered by Lord* Coke, *in the Presence, and with the clear Consent of all the Justices of* England *and the Barons of the Exchequer, that the King cannot in his own Person adjudge in any Case either Criminal as Treason, Felony,* &c. *or betwixt Party and Party, concerning Inheritance, Chattels, or Goods,* &c. *but this ought to be determined and adjudged in some Court of Justice, according to the Law and Custom of* England; *and always Judgments are given* Ideo consideratum est per Curiam; *so that the Court gives the Judgment: And the King hath his Court* (viz.) *in the Upper House of Parliament, in which he, with his Lords, is Supreme Judge over all other Judges; for if Error be in the Common Pleas, that may be reversed in the King's Bench; and if in the King's Bench, that may be reversed in the Upper House of Parliament, by the King, with the Assent of the Lords, without the Commons; and in this Respect the King is called the Chief Justice* 20 H. 7. 7. a. *by* Brudnel: *And it appears in the Books the King might sit in the Star Chamber, but this to consult with the Justices upon certain Questions proposed to them, and not in* Judicio; *so he may sit in the King's Bench, but it's the Court gives the Judgment. It's commonly said in the Books, That the King is always present in Court, in the Judgment of Law; and so cannot be nonsuited; but yet the Judgments are always* per Curiam. *The Judges are sworn to execute Justice,*

See p. 368.

Juſtice, according to the Law and Cuſtom of England, *and it appears by the Acts of Parliament of* 2 E. 3. c. 9 & 2 E. 3. c. 1. *that neither by the great nor the little Seal Juſtice may be delayed*; ergo *the King cannot take any Cauſe out of any of his Courts, and give Judgment upon it himſelf: Though in his own Cauſe he may ſtay it,* 11 H. 4. 8. *and the Judges informed the King, that no King after the Conqueſt aſſumed to himſelf to give any Judgment in any Cauſe whatſoever, which concerned the Adminiſtration of Juſtice within this Realm; but they were ſolely determined by the Courts of Juſtice: And the King cannot arreſt any Man.* 1 H. 7. 4. *for that the Party can have no Remedy againſt the King: So if the King give any Judgment what Remedy can the Party have.* Vide 39 E. 3. 14. *One who had a Judgment reverſed before the Council of State, it was held utterly void; as it was not a Place where Judgment may be reverſed.* Vide 1 H. 7. 4. Huſſey *Ch. Juſt. who was Attorney General to* E. 4. *reports that Sir* John Markham *Ch. Juſt. to that King, held that the King could not arreſt any Man for Suſpicion of Treaſon, or Felony, as others of his Lieges might; becauſe if it was a wrong to the Party he could have no Remedy. And it was greatly marvelled that the Biſhop durſt inform the King that ſuch abſolute Power and Authority as aforeſaid belonged to the King by the Word of God.* Vide 4 H. 4. c. 22. Judicia in Cur' Regis reddita non annihilentur, ſed ſtet Judicium in ſuo Robore quouſque per Judicium Cur' Regis tanquam Erroneum, &c. *vid* Weſt. 2 c. 5. *vide* le Stat. de Marlbridge c. 1. Proviſum eſt, concordatum, & conceſſum,

ceſſum, quod tam Majores quam Minores Juſtitiam habeant, & recipiant in Curia Domini Regis & *vide* le Stat. de Magna Charta, c. 29. 25 E. 3. c. 5. *None may be taken by Petition or Suggeſtion made to our Lord the King, or his Council, unleſs by Judgment*; *and* 43 E. 3. c. 3. *No Man ſhall be put to anſwer without Preſentment, before the Juſtices, Matter of Record, or by due Proceſs, or by Writ Original, according to the ancient Law of the Land*; *and if any thing be done againſt it, it ſhall be void in Law and held for Error.* Vide 28 E. 3. c. 3. 37 E. 3. c. 18. vide 17 R. 2. Ex Rotulis Parliamenti in Turri Act 10. *A Controverſy of Lands between Parties was heard by the King, and Sentence given, which was repealed; for that it belonged to the Common Law. Then the King ſaid that he thought the Law was founded upon Reaſon, and that he and others had Reaſon as well as the Judges: To which Lord* Coke *anſwered, (with great Courage and a true Spirit of Liberty) that true it was, That God had endowed his Majeſty with excellent Science and great Endowments of Nature; but his Majeſty was not Learned in the Laws of his Realm of* England; *and Cauſes which concerned the Life, Inheritance, Goods, or Fortunes of his Subjects, are not to be decided by natural Reaſon, but by the artificial Reaſon and Judgment of Law, which requires long Study and Experience before a Man can attain the Cognizance of it; and that the Law was the Golden Meetwand and Meaſure to try the Cauſes of the Subjects, and which protected his Majeſty in Safety and Peace. With which, his Lordſhip informs us, his Majeſty was greatly offended, and ſaid that then he ſhould be under the Law, which he ſaid was*





See 1. Cor: 2. 13. 14.

was Treaſon to affirm; to which Lord Coke *replied that* Bracton *ſaith* Quod Rex non debet eſſe ſub homine, ſed ſub Deo, & Leges *and of like Sort was the Caſe of Dr.* Couſins *and Dr.* Ridley *mentioned before, who were Men of like Spirit with the Archbiſhop above and ſome others of different Rank and Degree in the Church ſince.*

p. 30.

p. 44.

{The King ought not to be under Men, but under God, and the Law. ———}

Jura Eccleſiaſtica.

VOL. I.

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A.

I. *The King a mixt Body.*

1. ECcleſiaſtical Perſons are of two Sorts, Regular and Secular. The firſt are ſuch as lead a Monaſtical Life, under certain Rules, and have vowed three Things, 1*ſt*, True Obedience. 2*dly*, Perpetual Chaſtity; and 3*dly*, Wilful Poverty. When a Man is pro-

feſs'd in any of the Orders of Religion, he is ſaid to be a Man of Religion, a Regular, or Religious; and of this Sort are Abbots, Priors, Monks, Fryars, *&c.* And Seculars are thoſe Perſons Eccleſiaſtical, whoſe ordinary Converſation is in the World, and who undertake the Cure of Souls, but live not under the Rules of any Religious Order, nor are Votaries; and ſuch are Biſhops, Deans and Chapters, Archdeacons, Prebendaries, Parſons, Vicars, and the like; and none of theſe are ſaid to be *Homes de religion*, or Religious, *&c.* *Blount's Law Dict.* Tit. *Eccleſiaſtical Perſons.* *Co. Lit.* 93. *b.* 94. *a.*

2. *I conceive it not improper to add in this Place, the King's being a mixt Perſon, namely, Civil and Eccleſiaſtical, and Supreme Head of the Church, as will more fully appear hereafter; and as he is, to our preſent Purpoſe to be conſidered as Eccleſiaſtical, it may not be improper to begin with him; which being done, I ſhall then proceed to conſider the Pope as an Eccleſiaſtic too; tho' here he never had any real and lawful Juriſdiction; but ſuch Authority as he exerciſed in theſe Dominions was ſo uſed only by Uſurpation, by Force of a traitorous Combination between the diſloyal and rebellious Clergy of thoſe Times, and that incroaching Biſhop.*

3. *Omnes Reges dicuntur Clerici.* Da. 4. a. Vide *The King Supreme*, prox. poſt.

4. By 10 *H.* 7. 18. *Da.* 4. *a.* The King *eſt perſona mixta cum ſacerdotibus*; and 33 *Ed.* 3. *Reges ſacro oleo uncti ſunt ſpiritualis juriſdictionis capaces.* Dav. 4. And by *Stat.* 25 *H.* 8. the King hath reſumed to him again the Power of the Pope. *Palm* 477.

II. *The*

II. *The King Supreme.*

1. *General.*

1. THE King hath the Supreme Eccleſiaſtical Power. *Moor* 755.

2. The King is Supreme Governor as well over Eccleſiaſtical Perſons, and in Eccleſiaſtical Cauſes, as Temporal within this Realm. 5 *Co. De Jure Regis Eccl.* 40. *b.*

3. The King is Supreme and Sovereign Governor of the Church of *England*, and has an original, inherent Power which he executes, or may execute *Authoritate Regiâ Supremâ Eccleſiaſticâ*; and this is one of thoſe Flowers *quæ faciunt Coronam.* Hob. 143.

4. *Mich.* 23 *E.* 1. *Inter adjudicata coram Rege.* Hunt. 83 Theſaur. Scaccar. *ſic adjudicatur, quod Eccleſia eſt infra ætatem, & in cuſtodia Domini Regis, qui tenetur jura & hæreditates ejuſdem manutenere & defendere.* 11 Co. 49. b.

5. The King can conſtitute Appropriations, unite Churches, erect Eccleſiaſtical Benefices, or Dignities, diſpenſe with Irregularities, exempt from Eccleſiaſtical Juriſdiction, and the Execution of their Sentences, wherein a private Intereſt is not concerned; he can ſuſpend the Effects of their Sentences, even in Cauſes Criminal. *Hale's Analyſis* 19.

6. The Crown of this Kingdom Imperial. *Vide* 4 *Inſt.* 342, 343.

7. The King of *England*, who is, and always of Right was, the Fountain of all Juſtice and Juriſdiction in all Cauſes as well

Eccleſiaſtical as Civil, within his Dominions; tho' he *allows* the Prelates of the Church to exerciſe their ſeveral Juriſdictions in Cauſes of Matrimony and Cauſes Teſtamentary; which now properly belong to their Cognizance; for *ab initio non fuit ſic*; yet by the Rules of the *Superior* Common Law, the King hath the Superintendency over *them and* their Proceedings; and of Reſtraint and Correction, if they ſhould not proceed duly, as is clear from the ſeveral Sorts of Writs directed to Biſhops; whereby his Majeſty commands them to certify Baſtardy, Excommunication, Profeſſion, *Accouplement en loyal matrimony*, *De admitt' Cl'*, *De cautione admittend'*, and Attachment upon Prohibition. *Dav.* 51. *a.* 52. *b.*

2. *Acts of Parliament concerning the Supremacy.*

1. BY an Act made at a Parliament holden at *Carliſle*, 25 *E.* 1. after reciting as therein, it is declared, That the Biſhop of *Rome*, uſurping the Seigniory of Benefices here, did give and grant the ſame to Aliens, which did never live here, and to Cardinals who might not dwell here, *&c.* in Adnullation of the State of the Holy Church of *England*, Diſinheriſon of the King, Earls, Barons, and other Nobles of the Realm, and in Offence and Deſtruction of the Law and Right of this Realm, and againſt the good Diſpoſition and Will of the firſt Founders; It was enacted by the Aſſent of all the Lords and Commonalty in full

full Parliament, That the ſaid Oppreſſions, Grievances, and Damages in this Realm from thenceforth ſhould not be ſuffered; as more at large appears by that Act. 5 *Co. De Jure Regis Eccl.* 13. *b.*

2. In the Preamble to the Statute of Faculties, the Parliament expreſs it to be their Judgment, that the Biſhop of *Rome* had deceived and abuſed the Subjects of the Crown of *England*, pretending that he had full Power to diſpenſe with all human Laws, Uſes and Cuſtoms, of all Realms, in all Cauſes Spiritual, which had been uſurped and practiſed by him and his Predeceſſors for many Years, to the great Derogation of the Imperial Crown of *England*; for whereas the ſaid Realm of *England* recogniſing no Superior, under God, but the King, hath been and yet is free from Subjection to any Man's Laws, but ſuch as have been made here for the Wealth of the ſame, or to ſuch other, as by Sufferance of the King, and his Progenitors, and the People of this Realm have taken at their free Liberty, and by their own Conſent to be uſed amongſt them, and have bound themſelves by long Uſe and Cuſtom to obſerve the ſame; not as to the Obſervance of the Laws of any Foreign Prince, Potentate or Prelate; but as to the accuſtomed and antient Laws of this Realm originally eſtabliſhed as Laws of the ſame by the ſaid Sufferance, Conſent and Cuſtom, and not otherwiſe. It ſtandeth with natural Equity and good Reaſon, that all ſuch human Laws made within this Realm, or induced into this Realm by the ſaid Sufferance, Conſent and Cuſtom, ſhould be diſ-

penſed with, abrogated, amplified, or diminiſhed by the King and his Parliament; or by ſuch Perſons as the King and Parliament ſhould authoriſe, &c. *Vide* 21 *H.* 7. 4. *a.* where it is ſaid, that certain Prieſts were deprived by the Act of Parliament in the Time of *R.* 2. *Dav.* 71. *b.* 72. *a.*

3. By *Stat.* 25 *H.* 8. The King hath reſumed to him again the Power of the Pope. *Palm.* 477.

4. By *Stat.* 1 *Eliz.* it is enacted, That ſuch Juriſdiction Eccleſiaſtical, as by any Spiritual or Eccleſiaſtical Power had then before been or might then be lawfully exerciſed, for the Viſitation of the Eccleſiaſtical Eſtate and Perſons, and for Reformation, Order and Correction of the ſame, and of all Manner of Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities within this Realm, ſhould for ever be united and annexed to the Imperial Crown of this Realm. And that her Highneſs, her Heirs and Succeſſors, ſhould have full Power and Authority by Letters Patent under the Great Seal to nominate and authoriſe ſuch Perſons, being natural-born Subjects, as her Highneſs, her Heirs or Succeſſors, ſhould think meet to exerciſe all and all Manner of Juriſdiction, Privileges, and Preheminences in any wiſe touching or concerning any Spiritual or Eccleſiaſtical Juriſdiction in this Realm of *England* and *Ireland*, and viſit and reform, redreſs, order, correct and amend all ſuch Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities whatſoever, which by any Spiritual or Eccleſiaſtical Power, Authority or Juriſdic-

tion

tion can, or may lawfully be reformed, ordered, redreſs'd, corrected, reſtrained, or amended, to the Pleaſure of Almighty God, the Increaſe of Virtue, and the Conſervation of the Peace and Unity of this Realm; and that ſuch Perſons, ſo to be authoriſed, ſhould, by Virtue thereof, have full Power and Authority to exerciſe all the Premiſſes according to the Effect of ſuch Letters Patent. 5 *Co. De Jure Regis Eccl.* 1. *a. b.* 2. *a.*

5. The King hath Eccleſiaſtical Juriſdiction by the Act 1 *Eliz.* and thereby Power was given to that Queen and her Heirs and Succeſſors to name Eccleſiaſtical Commiſſioners. 5 *Co. De Jure Regis Eccl.* 5. *a. b.*

6. The *Stat.* 1 *Eliz.* concerning Eccleſiaſtical Juriſdiction was not a Statute introductory of a new Law, but declaratory of the old. 5 *Co. De Jure Regis Eccl.* 8. *a.* 2 *Cro.* 37.

3. *Rules in.*

1. REX *eſt mixta perſona cum ſacerdote.* Dav. 4. a. 11 Co. 70. a.

2. *Rex eſt mixta perſona & capax ſpiritualis juriſdictionis.* Cro. Eliz. 599.

3. *Rex eſt perſona mixta, medicrs Regni, pater patriæ & ſponſus Regni,* who, *per annulum,* is eſpouſed to the Realm at his Coronation. 11 *Co.* 70. *b.*

4. *H.* 7. *Rex eſt perſona mixta,* becauſe he hath both Eccleſiaſtical and Temporal Juriſdiction. 5 *Co. De Jure Regis Eccl.* 28. *a.*

5. *Decreta*

5. *Decreta Conciliorum non ligabant Reges nostros.* Moor 906.

6. *Reges sacro Oleo uncti spiritualis Jurisdictionis sunt capaces.* Dav. 4. a. 5 Co. De jure Regis Eccl. 16. a. 33 E. 3.

7. *Omnes Reges dicuntur Clerici.* Dav. 4. a.

8. *Causa Spiritualis committi potest principi Laico.* Dav. 4. a.

9. *Præsumitur Rex habere omnia Jura in Scrinio Pectoris sui.* Co. Lit. 99. a.

4. *Tho' Process be in the Ordinary's Name, yet that no Objection.*

1. THough the Proceedings and Process in the Ecclesiastical Courts are in the Names of the Bishops, *&c.* it followeth not therefore, that either the Court is not the King's, or the Law whereby they proceed is not the King's Law; for taking one Example for many, every Leet or View of Frankpledge, holden by a Subject, is kept in the Lord's Name, and yet it is the King's Court, and all the Proceedings therein are directed by the King's Laws; and many Subjects in *England* have and hold Courts of Record and other Courts, and yet all their Proceedings are according to the King's Laws and Customs of the Realm. 5 *Co. De jure Regis Eccl.* 39. *b.* 40.

5. *May diſpenſe with the Eccleſiaſtical Laws.*

1. *General.*

A Voidance by Ceſſion being introduc'd by Common Law, the King may ell diſpenſe with the Canon. 14 *H.* 8. 7. *alm.* 470.

2. In former Times the Popes uſed to rant Diſpenſations of Canons, and ſo might he King. *Palm.* 470.

3. The firſt Statute reſtraining the Power f the Pope was Stat. 21 *H.* 8. of Pluralies, that the Church ſhould be void notwithſtanding any Grant of the Pope; and he Power of the Pope was utterly taken way by Stat. 25 *H.* 8. Before the Stat. 1 *H.* 8. the Pope might have diſpenſed with a Man's having twenty Benefices; the ame of the King; for the Stat. 21 *H.* 8. is ot to give more Power, but totally to reſtrain. *Whitlock*, the Stat. 21 *H.* 8. tho' it reſtrain the Power of the Pope, was the irſt Statute in our Law which gave Allowance to Pluralities, and after came Statute 25 *H.* 8. which tolls the Power of the Pope and gives it to the King; but as *Jones* ſaid, and alſo was agreed, it was not by Way of Introduction, but cumulative and by Way of Expoſition, *&c.* *Palm.* 470.

4. The King may diſpenſe with a Baſtard's being a Prieſt. *Palm.* 470.

5. *Whit-*

5. *Whitlock* ſaid, he had known the King grant a Diſpenſation when the Archbiſhop could not. *Palm.* 470.

6. All the Judges took it clearly that the King might, *ſans Parliament*, make Ordinances and Inſtitutions for the Government of the Clergy, and might deprive if they obey'd not; and the Divulging of ſuch Ordinances by Proclamation is good and as a gracious Admonition; and if the Clergy refuſe to obey, the King's Commiſſioners, being thereunto impowered, may deprive; but ſuch Commiſſioners cannot make any Conſtitutions or Canons to bind the Clergy; tho' they may deprive, as aforeſaid, *ex Officio*, and that without any Libels & *ore tenus convocat'*. *Moor* 755, 756.

7. The Kings of *England* in every Age before *H.* 8. granted Diſpenſations in Eccleſiaſtical Cauſes: As for Inſtance, the Law of *England* is, that every Spiritual Perſon is viſitable by the Ordinary; yet *William* the Conqueror, by his Charter, exempted the Abbot of *Battel* from Viſitation and Juriſdiction of the Ordinary, in theſe expreſs Words, *Sitque dicta Eccleſia libera & quieta imperpetuum ab omni ſubjectione Epiſcoporum & quarumlibet Perſonarum Dominatione, ſicut Eccleſia Chriſti Cantuarienſis, &c.* By which he diſpenſed with the Law of *England* in this Caſe. *Vide Lib. de vera differentia Regiæ Poteſtatis & Eccleſiaſticæ, edit.* 1534. where all the ſaid Charter is recited at large; and the like Charter was granted to the Abbot of *Abbingdon* by King *Kenulphus*, *&c. Davis's Rep.* 72. *b.* 73. *a.*

8. The

8. The King did by his Charter tranſlate Canons Secular into Regular and religious Perſons, which he did by his Eccleſiaſtical Juriſdiction, and could not do it, unleſs he had Juriſdiction Eccleſiaſtical. 5 *Co. De Jure Regis Eccleſ.* 16. *b.*

9. The Concurrence of the Pope to Exemptions from ordinary Juriſdiction to religious Houſes was not antiently thought neceſſary; and our antient Kings of their own Authority exempted Abbies from Epiſcopal Juriſdiction, and it hath always been a receiv'd Rule, even in Times of Popery, that the Chancellor ſhall viſit a Church of the King's Foundation, tho' not ſpecially exempted. *Hawk. Pl. Cro. Præmunire, Sect.* 6. *Co. Litt.* 44. *a. Fitzh. N. B.* 22. *a.* 27 *E.* 3. 85. *a.* 6 *H.* 7. 14. *a.*

10. * *Moore* and *Moore*, Lord Chancellor ſaid, That the King might diſpenſe with the Canons, but a Metropolitan could not. * In Canc. Seals before Eaſter 1741.

2. *To be a Prieſt*, &c.

1. 11 *H.* 7. By the Eccleſiaſtical Laws allowed here, a Prieſt cannot have two Benefices, nor a Baſtard be a Prieſt; yet the King may, by his Eccleſiaſtical Power and Juriſdiction, diſpenſe with both of theſe; becauſe they are *mala prohibita*, and not *mala per ſe*. 5 Co. De Jure Regis Eccl. 28. a.

3. *In Matters of Faculties, or Diſpenſations for Pluralities*, &c.

1. The King of *England* only might, *de Jure*, diſpenſe with the Eccleſiaſtical Law, before

before the making the Statute of Faculti
or Diſpenſations. *Dav.* 73. *a. which gave*
Power prout *in that Statute to the Archbiſh*
of Canterbury.

2. The King of *England*, and not th
Pope, before the Statute of Diſpenſations
Faculties, *de Jure*, might diſpenſe with th
Eccleſiaſtical Law in the Caſe of a *Comme*
dam (as was the principal Caſe) and i
other Caſes; for tho' many of our Eccle
ſiaſtical Laws were firſt hatch'd at *Rome*
yet ſuch of them as have been eſtabliſhe
and confirmed in this Realm by Acceptanc
and Uſage are now become *Engliſh* Law
& ne ſerront amplius *repute Romiſh* Ca
nons or Conſtitutions, as *Rebuffus*, ſpeakin
de Regula Cancellaria Romana de veriſimi
Notitia: hæc regula (ſaith he) *ubi in Regn*
Franciæ eſt recepta, & Lex Regni effecta &
obſervatur tanquam Lex Regni, non tanqua
Papæ regula; & Papa eam revocare non po
teſt. Da. 72. a.

3. The Crown having by the Statute o
25 *H.* 8. the Supremacy united to it, whic
the Pope had exerciſed, might grant Diſ
penſations without the Archbiſhop, in Caſe
where the Archbiſhop might not by th
Stat. 25 *H.* 8. becauſe all ſuch Authority a
the Pope uſed (*though it was only by Uſurpa*
tion) is given to the Crown. *Mo. fol.* 54
543.

4. The Stat. 25 *H.* 8. which appoints ho
Diſpenſations, *&c.* ſhall be granted by th
Archbiſhop of *Canterbury*, and confirme
under the Great Seal, notwithſtanding th
negative Words, that it ſhall not be grant
ed in any other Manner. This Statute op

ly transfers the Authority of the Biſhop of *Rome* to the Archbiſhop; but the King by his Prerogative at Common Law might have done it, &c. *Cro. Eliz.* 542.

5. All the Judges agreed, that the Queen, by her Prerogative, without the Archbiſhop, may grant to a Biſhop to hold a Church in *Commendam*, notwithſtanding the Stat. 25 *H.* 8. *Cro. Eliz.* 601.

6. *As to Biſhops.*

1. *As to their Inveſtiture.*

1. THE King by his Prerogative might make a Biſhop *ſans Election*, or inſtal a Biſhop *per Annulum & Baculum:* He might elect a Biſhop *de novo*; alſo he might conſecrate a Biſhop by his legal Authority: He might grant Spiritual Juriſdiction to a Dean; and he might erect a Prior and Convent into a Biſhoprick. *Palm.* 25, 27.

2. The Pope himſelf was elected by the Emperor till *H.* 5. and *Wolſtan*, who was alſo canonized for a Saint, was inveſted by *Edward* the Confeſſor, and was made by him Biſhop of *Winton*; and therefore when *William* the Conqueror came to re-aſſume many Biſhopricks into his Hands, and put it to *Wolſtan* to reſign his Staff and Epiſcopal Juriſdiction, *Wolſtan* anſwered, *Quomodo tradam tibi quod non dediſti mihi?* And ſo went to *St. Edward*'s Tomb, and there ſurrender'd; ſo the Biſhop of *London* was inveſted by the King *per annulum & baculum*; and Canonical Election, by the Canons of the

the Church, of the Biſhop was not perfectly eſtabliſhed in *England* till King *John's* Reſignation, which is in the *Tower*; but *this Prince, unhappy as he was*, did not give all his Power, but reſerved to himſelf, 1ſt, The Temporalties during the Vacation; 2dly, The Power to make *Conge d'Eſlier*; and, 3dly, His Royal Aſſent. *Palm.* 26.

2. *As to their Temporalties.*

1. The King by his Prerogative ſhall have the Extent of Lands of the Freeholders of Archbiſhops and Biſhops, when ſuch Tenants be attainted for Felony in Time of Vacation, whilſt their Temporalties in the King's Hands, to give at his Pleaſure, ſaving to ſuch Prelates the Service that is thereto due and accuſtomed. *Stat. Prærogativa Regis, cap.* 14.

2. The Queen is the Head of the Church and hath the Temporalties of Biſhops. *Cro. Eliz.* 527. *Vide Da.* 90. *b.* 91. *a. b.* 92. *a. b.*

7. *May found Spiritual Corporations.*

1. THE King only may grant, or licence, to found a Spiritual Corporation. *5 Co. de jure Regis Eccl.* 26. *a.*

2. *Anno* 49 *E.* 3. Where the Abbot of *Weſtminſter* had a Prior and Convent who were regular and mort in Law; yet the King by his Charter did divide that Corpo-

ration, and made the Prior and Convent a diſtinct and capable Body to ſue and be ſued by themſelves. 5 *Co. De Jure Regis Eccl.* 17. *a.*

8. *As to Suits in the Eccleſiaſtical Courts.*

1. *They are for him, tho' proſecuted by any other Perſon.*

1. ALL Suits in the Eccleſiaſtical Courts *ex Officio* are for the King. 5 *Co.* 51. *Cro. Car.* 47, 68, 199. *Hob.* 81, 82. *Cro. Ja.* 335.

2. *Thoſe Courts may not proceed to Trial in ſeveral Matters, without the Royal Command.*

1. In the Reign of *H.* 3. and of his Progenitors, and ever ſince, if any Iſſue were joined upon the Loyalty of Marriage, general Baſtardy, or ſuch like, the King ever writ to the Biſhop of the Dioceſe, *as mediate Officer and Miniſter of his Court*, to certify; all which does apparently prove, that theſe Eccleſiaſtical Courts were under the King's Juriſdiction and Commandment, *&c.* 5 *Co. De Jure Regis Eccl.* 11. *b.* Vide *Matters Matrimonial.*

3. *He may pardon Offences againſt the Eccleſiaſtical Laws.*

1. The King may diſpenſe with the Eccleſiaſtical Laws, and as he may diſpenſe with them, ſo he may pardon all Offences againſt ſuch Laws, and his Pardon is a Bar to all Suits *pro ſalute animæ*, or Reformation of Manners, and alſo all Suits *ex officio* in the Eccleſiaſtical Courts, as in *Hall*'s Caſe, 5 *Co.* 51. *Dav.* 73. *a.* Vide *The King Supreme, Acts of Parliament concerning.* Vide poſt *Eccleſiaſtical Courts, their Sentences, and thoſe affected by the King's Pardon.*

9. *So he is capable of Proxies*, &c.

1. *Proxies.*

1. THE King is capable of Proxies; for by the antient Laws of the Realm the King hath Power to viſit, reform and correct all Abuſes and Enormities in the Church: And by the Statutes made *Tempore H.* 8. the Crown was but remitted and reſtored to its antient Juriſdiction, which was uſurped by the Biſhop of *Rome*; by 33 *E.* 3. made in Aid of the King, 103. *Reges Sacro oleo uncti ſpiritualis juriſdictionis ſunt capaces*, and Proxy is a Profit of Juriſdiction. 10 *H.* 7. 18. *Rex eſt mixta perſona cum ſacerdote*; alſo the King might have Tithes, by the Common Law, of which a Lay Perſon was not capable. 22 *Aſſ. pl.* 75. 21 *H.* 7. 1. *Caſaneus in Catalogo Gloriæ Mundi, pt.* 5. *Conſideratione*

ſideratione ſecunda, cites a Text of Canon Law, (*Viz.*) *Quod omnes Reges dicuntur Clerici*, and alſo another Text of the ſame Law, *Quod cauſa ſpiritualis committi poteſt Principi laico.* Dav. 41 a.

2. *Mortuaries.*

1. The King hath a Mortuary after the Death of every Archbiſhop and Biſhop; he hath after ſuch Deaths ſix Things, 1. *Optimum equum, ſive palfridum, ipſius Epiſcopi, cum ſella & fræno.* 2. *Unam chlamidem ſive clocam cum capella.* 3. *Unum ciphum cum coopertorio.* 4. *Unum pelvem cum lavatorio ſive aquar'.* 5. *Unum annulum aureum.* 6. *Necnon mutam canum*, which ſaith the Record, *ad Dominum Regem ratione prærogativæ ſuæ ſpectant & pertinent.* And there is a ſpecial Writ which iſſueth out of the Exchequer, after the Death of the Biſhop, for anſwering of the ſame, and this is called *Multa Epiſcopi*, or *Multura Epiſcopi*, *à Multa*, for that it was a Fine to the King for Power to make their Laſt Wills and Teſtaments, and to have the Probate of other Men's Teſtaments, and granting Adminiſtration; for true it is which is ſaid, *Nullam habebant Epiſcopi authoritatem præter eam, quam a Rege acceptam referebant, jus teſtamenta probandi non habebant, adminiſtrationis poteſtatem cuiquam delegari non poterant, nec ipſi quidem teſtamenta facere de jure communi, dum id illis, regnante* H. 3. *conſenſum erat & confirmatum, vivente* E. 1. &c. 2 Inſt. 491.

3. *Tithes.*

1. Tithes ariſing in Places extraparochial the King ſhall have; for that he having the Supreme Eccleſiaſtical Juriſdiction is bound to provide a ſufficient Paſtor that ſhall have the Cure of Souls of that Place; and by the Common Law of *England* it is evident, that no Man, unleſs he be Eccleſiaſtical, or hath Eccleſiaſtical Juriſdiction, can have Inheritance of Tithes. 5 *Co. De Jure Regis Eccl.* 15. *a.*

10. *As to Matter of Viſitation.*

1. *Where the Crown is Founder.*

1. 20 *E.* 3. ALL Religious or Eccleſiaſtical Houſes, whereof the King was Founder, are by the King exempt from ordinary Juriſdiction, and only viſitable and corrigible by the King's Eccleſiaſtical Commiſſion. 5 *Co. De Jure Regis Eccl.* 15. *a.*

2. The Abbot of *Bury* in *Suffolk* was exempted from Epiſcopal Juriſdiction by the King's Charter. 5 *Co. De Jure Regis Eccl.* 15. *a.* 21 *E.* 3.

Vide poſtea *Charities*, &c *viſited by the Founder*, &c. etiam *Impropriations.*

2. *Is*

2. *Is general Viſitor.*

1. The King hath Power to viſit, reform and correct all Abuſes and Enormities in the Church. *Dav.* 4. *a.*

Vide ante *The King Supreme*, ſo capable of Proxies.

3. *May exempt from Ordinary Viſitation*, &c.

1. The Law of *England* is, that every Spiritual Perſon is viſitable by the Ordinary; yet King *William* the Conqueror by his Charter exempted the Abbey of *Battel* from the Viſitation and Juriſdiction of the Ordinary, by which he diſpenſed with the Law of Holy Church. *Dav.* 72. *b.* 73. *a.*

2. King *Kenuphus*, who reigned *anno* 755, beſtowed upon the Monaſtry of *Abingdon in Com' Berks*, *quandam Ruris ſui portionem*, *&c. & quod prædictus* the Abbot, *&c. ab omni Epiſcopali Jure in ſempiternum eſſet quietus*, *& ut inhabitatores ejus nullius epiſcopi aut ſuorum officialium jugo inde deprimantur*, *ſed in cunctis rerum eventibus & diſcuſſionibus cauſarum*, *Abbatis Monaſterii prædicti decreto ſubjiciantur*, *ita quod*, *&c.* By which, as appears, the King by his Charter in Parliament, *&c.* diſcharged and exempted the ſaid Abbot from Epiſpcopal Juriſdiction, and granted the Eccleſiaſtical Juriſdiction to the ſaid Abbot with his ſaid Abbey, which continued till the Diſſolution. *5 Co. De Jure Regis Eccl.* 9. *b.* 10 *a.*

3. 17 *E.* 3. The King may not only exempt any Eccleſiaſtical Perſon from the Juriſdiction of the Ordinary, but may grant to him Epiſcopal Juriſdiction, as the King had done of antient Time to the Arch-deacon of *Richmond*. 5 *Co. De Jure Regis Eccl.* 14. *b.* 15. *a.*

11. *As to Appropriations and Impropriations.*

1. THE King ſole, without the Pope, might make an Appropriation. 7 *E.* 3. *Fitz. Quare Impedit*, 19. So in the Caſe of the Biſhop of *St. David's*. 11 *H.* 4. 213. *b. Dav.* 73. *a.*

2. Every Appropriation compriſeth in it a Diſpenſation to the Parſon imparſonee to have and retain the Benefice in Perpetuity; as in *Grendon's* Caſe in *Plow. Com.* 503. In which Act the King by the Common Law muſt always be an Actor, not only as Supreme Patron, as is alſo obſerved in *Grendon's* Caſe, but alſo as Supreme Ordinary; for the King ſole, without the Pope, might make an Appropriation. 7 *E.* 3. *Fitz. Quare Impedit.* So in the Caſe of the Biſhop of *St. Davids*, 11 *H.* 4. 213. *b. Hankford* put this Queſtion; If the King had granted before the Creation of a Biſhop, that he might hold the Benefice and the Biſhoprick together, as the Apoſtle had done, (*as they then affected to call the Pope*) whether ſuch Grant ſhould be good? *Norton* and *Skreene* good enough. So 4 *H.* 7. 12. *a.* in the Caſe *de malo prohibito & malo in ſe*, it is held, that the King might diſpenſe

penſe with a Prieſt to hold two Benefices, and with a Baſtard, that he might be a Prieſt, notwithſtanding the Eccleſiaſtical Laws, which are to the contrary. And as he might diſpenſe with the Laws, ſo he might pardon all Offences againſt thoſe Laws; and his Pardon is a Bar to all Suits *pro ſalute animæ*, or *reformatione morum*, and alſo all Suits *ex officio* in the Eccleſiaſtical Court, as in *Hall's* Caſe in 5 *Co.* 51. *Dav.* 73. *a.*

3. *Tempore E.* 3. it was agreed, that no Man alone can make an Appropriation of any Church having Cure of Souls, being a Thing Eccleſiaſtical, and to be made to ſome Perſon Ecccleſiaſtical, but he who hath Eccleſiaſtical Juriſdiction; but *William* I. of himſelf, without any other, (as King of *England*) made Appropriations of Churches with Cure to Eccleſiaſtical Perſons; wherefore it followeth, that he had Eccleſiaſtical Juriſdiction. 9 *Co. De Jure Regis Eccl.* 10. *b.*

4. The King can conſtitute Appropriations, unite Churches, erect Eccleſiaſtical Benefices or Dignities, diſpenſe with Irregularities, exempt from Eccleſiaſtical Juriſdiction and the Execution of their Sentences, wherein a private Intereſt is not concerned. He can ſuſpend the Effect of their Sentences, even in Cauſes Criminal. *Ha. Anal.* 19.

12. *As to Reſignation.*

1. *General.*

1. A Reſignation to the King, as he is Supreme Ordinary, *viz. Supremo Capiti Eccleſiæ*, is as good as to the immediate

Ordinary; though by him collated. *Dyer* 294 *a.*

2. 12 *Eliz.* It was adjudged in the Court of Common Pleas by Sir *James Dyer*, *Weſton*, and the whole Court, that a Dean, or any other Eccleſiaſtical Perſon, may reſign, as divers did to King *E.* 6. for that he had the Authority of the Supreme Ordinary. 5 *Co. De Jure Regis Eccl.* 34. *b.*

3. The King, at Common Law, might have taken Reſignation, whereby to extinguiſh a Prebend or Parſonage, which no Biſhop could. *Palm.* 477.

2. *The Words proper thereto.*

1. It was agreed by all, that *Reſignare* is not the Law Term; but the Word *renunciare*, *cedere*, *vel demittere*, and theſe are the Terms uſual in Reſignations. *Dy.* 294.

13. *To preſent.*

1. *By Lapſe.*

1. THE King hath his Preſentment by Lapſe by the Common Law, as Supreme within his own Kingdoms, and as ſuch hath Power to provide a competent Paſtor for the Church. 5 *Co. De Jure Regis Eccl.* 14. *b.* 21 *E.* 3.

2. The King's Prerogative is, that no Time ſhall prejudice him, (*Nullum tempus occurrit Regi*) in Point of Preſentation to a Church. *Stat. de Prærogativa Regis*, 17 *E.* 2. *c.* 8. *Vide* 7 *Co.* 28. *Dy.* 36. *Bro.* Tit. *Parliament*, 6.

3. All

3. All the Judges and Barons agreed, that the Preſentation of the King by Lapſe ſhall be ſaid to be in another's Right; for though he preſent *ratione Prærogativæ*, yet he preſents as in the Patron's Right. *Cro. Car.* 356.

4. The King grants an Advowſon to *Wyat*, who granted over to *Savil*, and after the King preſents by Lapſe, before any actual Seiſin in either of the Grantees by Preſentment, this Preſentment of the King by Lapſe affirms the Poſſeſſion of the Grantee, and does not caſt a new Fee upon the King. *Palm.* 311, 312.

2. *Where Clerk preferred by him.*

1. On Promotion of an Incumbent to a Biſhoprick, the Crown has a general Right to the next Avoidance, and is not reſtrained to within the Life of the Preſentee. *Nullum tempus, &c.* The King *v.* The Biſhop of *Armagh* and Dr. *Whaley.*

2. When an Archdeacon is preferred by the King to a Biſhoprick, he has the Preſentation to the Archdeaconry, in Reſpect of the Temporalties of the Biſhop, Patron of the Archdeaconry, and not by any Prerogative, and ſo it is, if an Incumbent in *Ireland* be made a Biſhop in *England.* 4 *Co. Inſt.* 356, 357.

14. *He is the Dernier Resort.*

1. *So no Appeals from.*

1. NO Appeal lies from the Sentence of the Crown. 4 *Inst.* 343.

2. *May grant Commissions, of Review,* &c.

1. Vide postea *Commissions of Review,* &c.

B.

The Pope.

An Usurper.

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1. *The Courſe of their Uſurpations.* —

3. *The Oppoſitions the ſame have met with.* 61. 1. General —.

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I. *General to him.*

1. THE Pope at firſt did not aſſume to himſelf all Power, but began to infringe upon the Laws with ſome Sort of Modeſty. *Palm.* 463.

2. This Spiritual Prince (*as his Creatures ſtile him*) the Pope, grew to his Greatneſs by Uſurpation upon other States and Churches. *Dav.* 88. *a.*

3. The Pope cannot alter the Laws of *England*, as was reſolved 11 *H.* 4. 5 *Co. De Jure Regis Eccl.* 23. *a.*

4. Lord *Coke* takes Notice, that the firſt Attempt of any Appeal to the See of *Rome* out of *England* was by *that Arch Rogue Anſelme*

selme Bishop of *Canterbury*, and which took no Effect. 4 *Inst.* 341.

5. The Pope so long ago as *anno* 50 *E.* 3. was so much despised and disregarded, as to be called *Dæmon*, and the Bull-Calf of *Rome*. Vide *The Table to the Year-Books.*

6. Whatsoever the Pope did in this Kingdom, even then when he was in the greatest Height and Strength, and when indeed he was *Dæmon meridianus*, was of no better Force in Right and Justice than at the first, when he was but simple Bishop of *Rome*; so whatsoever he did was *coram non judice*, and so *Jus non habenti tutò non paretur*, as is clearly declared by the Statute 28 *H.* 8. *cap.* 16. *sect.* 1, 2. *Hob.* 146.

7. The Pope could not make Ordinances against any Statute Law. *Cro. Jac.* 517.

8. The Pope had no Right to meddle with any Advowson, Benefices, *&c. Cro. Jac.* 517.

9. The Pope cannot dispense with any Temporal Laws, though they tend *in ordine spirituali*; *a fortiori* not with the Statute Law. All Dispensations from him are void and of no Force, contrary to the Law of the Land; *a fortiori* where the Law prohibits him to meddle with Benefices, *&c. Cro. Jac.* 517.

10. The Pope's Collector or Minister (as say our antient Books) had no Jurisdiction within this Realm. 4 *Inst.* 321.

11. 12 *R.* 2. Against an Incumbent of a Church in *England* another sued a Provision in the Court of *Rome*, and there pursued until he recovered the Church against the Incumbent, and after brought an Action of

Account

Account againſt him, as Receiver of divers ums of Money, (which in Truth were the blations and Offerings which the Incum- ent had received). The whole Court was f Opinion againſt the Plaintiff, and there- pon he became Nonſuit. 5 *Co. De Jure Regis Eccl.* 20. *b.*

12. See *Gerrald Cambren, lib.* 2. *c.* 34. *Tempore H.* 2. A Synod of the Church of *Ireland* was held at the Caſtle, at which Sy- od it was (*inter alia*) ordained, *Quod omnia ivina, juxta quod* Anglicana *obſervat Eccleſia, n omnibus partibus* Hyberniæ *amodo tracten- ur. Dignum enim & juſtiſſimum eſt, ut ſicut Dominum & Regem ex* Anglia *divinitus ſortita ſt* Hybernia, *ſic etiam exinde vivendi formam ccipiant meliorem.* Dav. 72. b.

13. Though the firſt Parliament held in *reland* was after the firſt Law made in *Eng- and* againſt Proviſors; yet there have been s many particular Laws made in *Ireland* a- gainſt Proviſions, Citations, Bulls and *Breves* f the Court of *Rome*, as are to be found in ll the Parliament Rolls in *England*. In the ame Parliament 10 *H.* 7. *cap.* 5. a ſpecial Law was made, enacting, authoriſing and confirming in that Realm all the Statutes of *England* made againſt Proviſors; and before his, (*viz.*) 32 *H.* 6. *cap.* 4. and again 28 *H.* 6. *ap.* 30. the like; and before them the like Law was enacted by Parliament 40 *E.* 3. *cap.* 3. in the famous Parliament of *Kelkenny*; nd a Statute of like Sort, 7 *E.* 4. *c.* 2. and a everer than all theſe was the 16 *E.* 4. *cap.* 4. That ſuch as purchaſe any Bulls of Provi- ion in the Court of *Rome*, as ſoon as they ave publiſhed or executed the ſame to the

Hurt

Hurt of any Incumbent, should be judged Traitors. *Dav.* 87. *b.*

14. The *Irish* Nation consented to all the Statutes made in *England*, and the same were established and made of Force in *Ireland* by the Stat. 10 *H.* 7. *cap.* 22. *Dav.* 87. *a. b.*

15. *Decreta Conciliorum non ligabant Reges nostros.* Moor 906.

16. *Papa non tollit Jus tertii.*

17. *Talis præsumitur Mens Papæ concedentis qualis est Juris.* } Canon Rules

18. *Leges Angliæ sine Parliamento mutari non possunt.* 2 Inst. 619.

19. 30 *E.* 3. If Excommunication, being the extreme and final End of any Suit in the Court of *Rome*, be not to be allowed within *England*, it consequently followeth, that by the ancient Common Laws of *England*, no Suit for any Cause, tho' it be Spiritual, rising within this Realm, ought to be determined in the Court of *Rome*, *Quia frustra expectatur Eventus cujus effectus nullus sequitur.* 5 Co. De Jure Regis Eccl. 15. b.

II. *Particular Instances.*

1. *In imposing his Laws.*

1. WHEN the Bishop of *Rome* perceived that many of his Canons were received and used by divers Nations of Christendom, by Colour thereof he claimed Ecclesiastical Jurisdiction in every

Realm and State where his Canons were received, and ſent his Legates with ſeveral Commiſſions into the ſeveral Realms of Chriſtendom to hear and determine Cauſes according to ſuch Canons; tho' the Pope or his Miniſter upon the firſt Venting and Uttering of them durſt not call them Laws, *Ne committerent crimen læſæ Majeſtatis in Principes*, as *Marſil. Pat.* hath well obſerv'd. *Lib. Defenſor Pacis*, *Part* 2. *cap.* 23. Who alſo ſaith in the ſame Book, that thoſe Canons, in as much as they are made by the Pope, *neque ſunt humanæ Leges*, *neque divinæ*, *ſed Documenta quædam & Narrationes*; yet when he found his Canons receiv'd, allow'd, and uſed in Part by ſeveral Nations, he compiled them into Volumes, and called them *Jus Canonicum*, and ordained that they ſhould be read and expounded in all Univerſities and publick Schools, and commanded they ſhould be obeyed by all Chriſtians on Pain of Excommunication, and often endeavoured to enforce them by Coercive Power, and took upon him to interpret, abrogate and diſpenſe with ſuch Laws in all the Realms of Chriſtendom at his Pleaſure; ſo that the Canoniſts aſcribe to him this Prerogative, *Papa in omnibus pure poſitivis*, *& in quibuſdam ad jus divinum pertinentibus*, *diſpenſare poteſt*, *quia dicitur omnia Jura habere in Scrinio Pectoris ſui quantum ad Interpretationem & Diſpenſationem*, *Lib.* 6. *De Conſt. Cap. Licet. Dav.* 71. *b. Anno* 25 *E.* 1. *Simon*, a Monk of *Walden*, began to read the Canon Law in the Univerſity of *Cambridge*. See *Stow* and *Walſingham*, and the Manuſcript, *Lib.* 6.

Decret.

Decret. in the Library of *New College*, *Oxon*, where is wrote in the Front *Anno Domini* 1258, which was 26 *E.* 1. 19 *November*, *in Ecclesia Fratrum prædicator' Oxon fuit facta Publicatio. Lib.* 6. *Decret.* By which it appears, when the Canon Law was first introduced into *England.* But the Jurisdiction which the Pope claimed in *England*, by Colour of this, was a meer Usurpation, to which the Kings of *England* always from Time to Time made Opposition, even to the Time of *H.* 8. *Dav.* 71. *b.*

2. *Sending Legates hither.*

1. IN *Ed.* the 4th's Reign, a Legate from the Pope came to *Calais* in his Way to *England*; but the King and his Council did not suffer him to come into *England* till he had taken an Oath, that he would attempt nothing against the King or his Crown. And so the like was done in his Reign to another of the Pope's Legates, and this is so reported 1 *H.* 7. *fol.* 10. 5 *Co. De Jure Regis Eccl.* 27. *a.*

3. *In granting Sanctuaries*; *what they are*, &c.

1. *The Sorts.*

1. SAnctuaries are of two Sorts, *viz.* 1st, Private, as *Westminster*, and the like; 2dly, General, as is every Church. *Bro. Coron.* 181. *in Fine.*

2. *As to the Pope's Granting thereof.*

1. The Pope *ſans le Roy* hath no Power to make a Sanctuary. *Keil.* 190.

2. In *E.* 4.'s Time, the Pope granted to the Prior of St. *John* to have Sanctuary within his Priory, and this was pleaded and claimed by the Prior; but reſolved by the Judges that the Pope had no Power to grant any Sanctuary within this Realm, and therefore by Judgment of Law the ſame was diſallowed. *5 Co. De Jure Regis Eccl.* 26. *a.*

3. If a Man takes to a Church, and the Coroner comes to him and demands of him wherefore he took to the Church, to which he anſwers he will adviſe forty Days before he will declare the Cauſe, the Coroner, in ſuch Caſe, may draw him out inſtantly; but if he would confeſs to him the Felony, he might remain there forty Days before he abjure. *Econtra*, where he takes Sanctuary at *Weſtminſter*, and the like; for there he may remain for Life, unleſs in Caſe where the Statute hath changed the Law. *Bro. Coron.* 180. *Sanctuary* 11. But if he would abjure within forty Days, the Coroner ſhall give or aſſign him a certain Day to do it in. *Bro. Coron. ſupra, Lit. Bro. Caſe* 515.

4. None ſhall take Privilege of a Church unleſs he be in Danger of Life. *Bro. Coron.* 181. nor none ſhall have the Privilege of Sanctuary, but he who is in Jeopardy of his Life. *Lit. Bro. Ca.* 515. *Bro. Coron.* 181.

5. Sanctuary can only be for the Life of Man, as for Treaſon, Felony and Homi-

cide, and not for Debt; and therefore a Grant or Preſcription to have Sanctuary for Debt is void, for that it is againſt Law; but if his Body be in Execution, and he eſcape and come to a Sanctuary which is for the Life of Man, he ſhall enjoy it; for that by long Impriſonment his Life might be in Danger; and if the Church be ſuſpended for Blood-ſhed; yet he who takes the Church for Felony ſhall enjoy it for forty Days. *Bro. Sanctuary ſupra. Lit. Bro. Ca.* 515.

6. Abjuration for Felony diſcharges all Felonies whatſoever committed before the Abjuration. A Man may not abjure for Petit Larceny; but only for ſuch Felonies for which he ſhould ſuffer Death. *Bro. Coron.* 182. *Lit. Bro. Ca.* 515.

7. Sanctuaries. *Keil.* 90, 229. *Dalt.* 11. *Lamb.* 23, 40. 5 *Mod.* 130. 1 *And.* 297. 2 *Leon.* 175. *Salk.* 347. 2 *Inſt.* 177, 190, 633. 189, 218. 12 *Co.* 81. *b.* *Moor* 550. *Fitz. Abr.* 295. *a.* *Hob.* 270. *Dyer* 50. *Hard.* 211.

4. *In granting Proviſions.*

1. REbuffus, *Lib. de praxi Beneficiorum*, puts this Rule, *quod quando Laici Patroni non præſentaverunt infra tempus a jure præfixum, ita quod Collatio revoluta ſit ad Superiorem per Lapſum Temporis, Papa de jure providere poteſt ſine derogatione juris Patronatus Laicorum.* Dav. Reports 81. a. b.

2. Anciently the Proviſion of the Pope amounted to Collation, and upon that the Proviſor might enter, as in *Plow. Grendon's* Caſe

Caſe, 500. and 11 *H.* 4. 220. *Hankford* ſaid, that Proviſion is as Inſtitution and Acceptance as Induction. *Dav.* 82. *a.*

3. The Truth is, the Faculties or Diſpenſations granted by the Pope touching Eccleſiaſtical Benefices in *England* were always againſt the Law of the Realm; for it was mere Uſurpation upon the Crown of *England* before the Statutes made againſt Proviſors, and thoſe Statutes were made in Declaration of the Common Law in this Point. 12 *E.* 2. *Fitzh. Quare Impedit* 169. 19 *E.* 2. *Fitzh. Quare non admiſſit* 7. 15 *E.* 3. *Fitzh. Quare impedit* 160. 21 *E.* 3. 40. 11 *H.* 4. 230. *a.* *Dav.* 81. *a.*

4. The Pope had no Power here in *England* but in Things meerly Spiritual, and if Things Spiritual were mix'd with Matters Temporal he had no Power. 13 *E.* 2. In the Exchequer, the Biſhop of *Winchester* was an Alien and collated by the Pope, whereupon the King at *Lambeth* proteſted that all Biſhopricks in *England* belonged to him and his Patronage, and proteſted he would not admit the Biſhop; whereupon he renounced all Title in the Temporalties by the Pope, and prayed the King to admit him, and ſo he did; for where a Temporal Fee is mix'd with a Spiritual Concern, the Pope hath not any Juriſdiction. *Palm.* 220.

5. *In granting Bulls, Breves, Writs,* &c.

1. AS to the Pope, it is often ſaid in the Biſhop of *St. David's* Caſe, 11 *H.* 4. That the Bulls of the Pope may not change the Laws of *England*, which agrees with the Common Law, *non valet Declaratio Papæ vel Regis in præjudicium tertii. Rebuffus in Praxi Beneficiorum*, Tit. *De non tollendo jus quiritum*, and elſewhere, he ſaith *per Clauſulam motu proprio, &c. Papa non tollit jus tertii. Talis præſumitur Mens Papæ concedentis, qualis eſt Juris. Donatio principis intelligitur, ſine præjudicio tertii.* Dav. 75. b.

6. *As to Appeals to him.*

Vide *The Courſe of Eccleſiaſtical Uſurpation, the Oppoſition*, &c.

7. *As to Biſhops Palls and their Inveſtiture.*

Vide *The Courſe of Eccleſiaſtical Uſurpation, the Oppoſition*, &c.

8. *His Excommunications.*

1. IN an Attachment upon a Prohibition the Defendant pleaded the Pope's Bull of Excommunication of the Plaintiff, the

the Judges demanded of the Defendant, if he had not the Certificate of ſome Biſhop within the Realm teſtifying this Excommunication; to whom the Counſel for the Defendant anſwered he had not, neither was it, as he ſuppoſed, neceſſary; for that the Bulls of the Pope under Lead were notorious enough; but it was adjudged that they were not ſufficient; for that the Court ought not to have Regard to any Excommunication out of the Realm; and therefore the Plaintiff was not diſabled. *5 Co. De Jure Regis Eccl.* 15. *b.* 16. *a.* 31 *E.* 3.

2. *Anno* 16 *E.* 3. An Excommunication of the Archbiſhop, though diſannulled by the Pope or his Legates, is to be allowed; neither ought the Judges to give any Allowance of any ſuch Sentence of the Pope, or his Legate. *5 Co. De Jure Regis Eccl.* 14. *b.*

3. Excommunication made and certified by the Pope is of no Force to diſable any Man within *England*; and this (as is 8 *H.* 6.) by the Common Law, before any Statute was made concerning foreign Juriſdiction. *5 Co. De Jure Regis Eccl.* 26. *a.*

4. 12 *E.* 4. The Pope's Excommunication is of no Force within the Realm of *England*. *5 Co. De Jure Regis Eccl.* 27. *a.*

5. *Regnante* Richardo *tertio*, It was reſolved by the Judges, that no Judgment or Excommunication in the Court of *Rome* ſhould bind or prejudice any Man within *England* at the Common Law. *5 Co. De Jure Regis Eccl.* 27. *a. b.* See alſo 1 *H.* 7. *fo.* 10. mentioned by Lord *Coke* in his ſaid *5th Report*, *Part* 1. *fo.* 27. *b.*

Vide *The Courſe of his Uſurpations*, &c.

III. *The Course of Ecclesiastical Usurpations.*

~~1. General.~~ 1. General.

1. THE Sovereigns and Subjects who lived before the Reformation in these Realms, doubtless generally imbraced the vulgar Errors and Superstitions of the Church of *Rome*, and in that Respect were Papists; however they had not learned the new Doctrine of the Pope's Supremacy and transcendent Authority over Kings; they did not believe he had Power to depose Princes, and to discharge Subjects of their Allegiance, to abrogate the Fundamental Laws of the Kingdom, and to impose his Canons, as binding Laws upon all Nations, without their Consents. On the contrary, they thought it a good Point of Religion to be good Subjects, to honour their King, to love their Country, and to maintain the Laws and Liberties thereof, however in other Points they did err and were misled with the Church of *Rome*. *Dav.* 87. *a.* And indeed not only these Kingdoms, but also *France*, *Naples* and other Kingdoms and Commonwealths of Christendom, from Time to Time have disavowed the Pope's Supremacy, and many of them to this Day, particularly *France*, though they remain inveterate Papists, yet maintain an Independency on the Pope, both in Matters Ecclesiastical and Civil; nay, even the Church herself and many of the Canonists have strenuously denied his Jurisdiction to extend to all Nations

ions, and to all Cauſes, as he and his Eccleſiaſtical Advocates and other Mercenaries have, *againſt all Religion, Reaſon, and common Honeſty, contended. But that we may be better underſtand the Growth of theſe Uſurpations, and the Oppoſition they have from Time to Time met with from both Prince and People, let us trace them as they have been from Time to Time impoſed or attempted, with the Occaſions thereof, and other Circumſtances neceſſary for the thorough underſtanding of the Progreſs of theſe Impoſitions upon both King and People, both which are and always were as independent of the Pope, as of the Emperor of* Rome *or* Morocco, *or even of any Prince or State, of whom we have not ſo much as yet heard; but I ſay, that we may the better underſtand theſe Matters, we will trace their Courſes though the Reigns of our ſeveral Kings, who have either laboured under the Curſe of that Impoſtor's Impoſitions, or ſtruggled with his and his Mercenaries Schemes for that Purpoſe.*

2. As for the *Saxons*; though King *Ina* gave the Peter-Pence to the Pope, partly as Alms, and partly in Recompence of an Houſe erected in *Rome* for Entertainment of *Engliſh* Pilgrims; yet it is certain, that *Alfred* and *Athelſtan*, *Edgar* and *Edmund*, *Canutus* the *Dane*, and *Edward* the Confeſſor, and divers other Kings of the *Saxon* Race, gave all Biſhopricks in *England per Annulum & Baculum*, without any other Ceremony, as the Emperor and *French* King and other Chriſtian Princes were wont to do. They made alſo ſeveral Laws for the Government of the Church; amongſt others St. *Edmund* begins his Laws with his Proteſtation, that

2 Usurpation.

it is his Princely Charge, *ut populum Domini, & ſuper omnia, ſanctam Eccleſiam regat & gubernet.* And King *Edgar* in his Oration to his Clergy, *Ego* (ſaith he) *Conſtantini, vos* Petri *Gladium habetis; jungamus dextras & Gladium Gladio copulemus, ut ejiciantur extra caſtra leproſi, & purgatur Sanctuarium Domini*; ſo as the Kings of *England* with their own Clergy governed the Church, and therein ſought no Aid of the Court of *Rome*; and the Truth is, that the Pope, though he then had long Hands, yet did not extend them to *England*; becauſe he was then full of Buſineſs nearer Home in drawing the Emperor and *French* King under his Yoke. *Dav.* 88. *b.* 89. *a.*

3. Before the Conqueſt, the Biſhop of *Rome* had no Juriſdiction in the Realm of *England*, neither in the Time of the *Britons*, nor in the Time of the *Saxons*. *Elutherius*, the Biſhop of *Rome* within leſs than 200 Years after *Chriſt*, writes to *Lucius* the *Britiſh* King, and calls him God's Vicar within his Kingdom; which Title he would not have given to that King, if himſelf, under Pretence of being God's Vicar General on Earth, had claimed Juriſdiction over all Chriſtian Kingdoms. *Dav.* 88. *a.*

4. About the Year 600 *Auguſtine* the Monk was ſent by *Gregory* the Great into *England* to convert the *Saxons* to Chriſtianity; the *Britiſh* Biſhops, then remaining in *Wales*, regarded not his Commiſſion, nor his Doctrines, as not owing any Duty, or having any Dependances on the Court of *Rome*, but ſtill retained their Ceremonies and Traditions, which they received from the *Eaſt* Church

Church, upon the firſt Plantation of the Faith in this Iſland, being divers, and contrary to thoſe of the Church of *Rome*, which *Auguſtine* endeavoured to impoſe upon them. *Dav.* 88. *b.*

5. And indeed the firſt Incroachment which the Pope of *Rome* made upon the Crown of *England* was in the Time of *William, called* the *Conqueror*; for before that Time the Pope's Writ did not run into *England*, his Bulls of Excommunication and Proviſion came not hither; no Citations nor Appeals were made from hence to the Court of *Rome*; our Archbiſhops did not purchaſe their Palls there, neither had the Pope the Inveſtiture of any of our Biſhopricks; for *England* was one of the laſt Countries of Chriſtendom that received the Pope's Yoke, and one of the firſt that rejected and caſt it of. *Dav.* 87. *b.* 88. *a.*

6. The Pope was ſo far intereſted in Favour of the *Norman*'s Pretenſions to the Crown of *England*, that he pronounced for him, againſt both the other Competitors, *Harold* and *Edgar Etheling*. *Hale's Hiſt. Law* 87.

7. Upon the Conqueſt made by the *Norman*, the Pope apprehended the firſt Occaſion to uſurp upon the Crown of *England*; for as the Conqueror came in with the Pope's Banner, and under that won the Battle which got the Garland, *this pious Robber* preſumed he might boldly pluck ſome Flowers from it, *eſpecially* being partly gained by his Countenance and Bleſſing; and hereupon he ſent two Legates, *the firſt of the Sort that ever came hither*, which were admitted

mitted and received by the Conqueror; with them he called a Synod of his Clergy, and deprived old *Stygand* the Archbiſhop of *Canterbury*, becauſe he had not purchaſed his Pall in the Court of *Rome*; he diſplaced many Biſhops and Abbots, to place his *Normans* in their Room; and amongſt the Reſt it is to be obſerved, that the King having earneſtly moved *Wolſton* Biſhop of *Wincheſter*, being then very aged, to give up his Staff, his Anſwer was, That he could give up his Staff only to him of whom he firſt received the ſame, and ſo the old Man went to St. *Edward*'s Tomb, and there ſurrendered his Staff and Ring, in theſe Words, *Of thee, Oh Holy* Edward, *I received my Staff and my Ring, and to thee I do now ſurrender the ſame again*; which proves that before the *Norman* Conqueſt, the King did inveſt his Biſhops *per Annulum & Baculum*. *Dav.* 89. *a.* Thus we ſee by the Admiſſion of the Pope's Legates, the firſt Step or Entry made into his uſurped Juriſdictions in *England*; though the King ſtill retained the abſolute Power of inveſting Biſhops, and ſeemed only to uſe the Advice and Aſſiſtance of the Legates in Eccleſiaſtical Matters; for no Decree paſt or was put in Execution without his Royal Aſſent; beſides, how far he ſubmitted himſelf to the Pope appeareth by a ſhort Epiſtle, which he wrote to *Gregory* the Seventh, in this Form, *Excellentiſſimo Sanctæ Eccleſiæ Paſtori* Gregorio *Gratia Dei* Anglorum *Rex & Dux* Normanorum Williemus, *ſalutem cum amicitia*, Hughbertus *Legatus tuus, Religioſe pater, ad me veniens ex tua parte admonuit, ut tibi & ſucceſſoribus*

ceſſoribus tuis fidelitatem facerem, & de pecu-
nia quam anteceſſores mei ad Romanam *Ec-*
cleſiam mittere ſolebant, melius cogitarem.
Unum admiſi, alterum non admiſi: fidelitatem
facere nolui, nec volo; quia nec ego promiſi,
nec anteceſſores meos anteceſſoribus tuis id fe-
ciſſe comperio; pecunia tribus ferè annis, in
Galliis *me agente, negligenter collecta eſt, nunc*
vero divina miſericordia me in regnum meum
reverſo, quod collectum eſt per præfatum Le-
gatum mittetur, & quod reliquum eſt, per Le-
gatos Lanfranci *Archiepiſcopi fidelis noſtri cum*
opportunum fuerit tranſmittetur, &c. Dav.
89. b.

8. In the Time of *William Rufus* they attempted to paſs one Degree farther, (*viz.*) to draw Appeals to the Court of *Rome*; for *Anſelme* being made Archbiſhop of *Canterbury*, and being at ſome Difference with the King, beſought his Leave to go to *Rome* under Pretence of fetching his Pall. The King, knowing he would appeal to the Pope, denied him Leave to go, and withal told him that none of his Biſhops ought to be ſubject to the Pope; but the Pope himſelf ought to be ſubject to the Emperor; and that the King of *England* had the ſame abſolute Liberties in his Dominions as the Emperor had in the Empire: And that it was an antient Cuſtom and Law in *England*, uſed Time out of Mind before the Conqueſt, that none might appeal to the Pope without the King's Leave, and that he who breaketh this Law and Cuſtom doth violate the Crown and Dignity Royal, and he that violates my Crown, ſaith he, is my Enemy, and a Traitor. How anſwer you this, quoth the King?

King? *Chriſt* himſelf anſwers you, ſaith the Biſhop, *Tu es* Petrus *& ſuper hanc* Petram *&c.* wherewith the King was nothing ſatisfied; and thereupon *Anſelme* departing out of the Realm, without Licence, the King ſeiſed his Temporalties, and became ſo exaſperated and implacable towards the Biſhop, as he kept him in perpetual Exile, during his Reign; though great Interceſſion was made for his Return, as well by the Pope as the King of *France.* Dav. 89, 90.

9. In the Reign of *H.* 1. who, though he was a learned and prudent Prince, yet the Pope and his Miniſters ſought to gain a farther Point upon him, namely, the Patronage and Donation of Biſhopricks, and all other Eccleſiaſtical Benefices; for *Anſelme* being revoked and re-eſtabliſhed in the See of *Canterbury*, the Biſhopricks of *Salisbury* and *Hereford* falling void, the King beſtowed them upon two of his Chaplains; but *Anſelme*, their Metropolitan, refuſed to conſecrate them; ſo as the Archbiſhop of *York* was fain to perform that Office, who, with the Chief of the *Engliſh* Clergy, ſtood againſt *Anſelme* with the King. Hereupon the King required him to do him Homage, which the Biſhop denied. The King then demanded of him, whether the Patronage and Inveſtiture of all Biſhopricks were not his rightful Inheritance; to which the Biſhop anſwered, it was not his Right, becauſe Pope *Urban* had lately made a Decree, that no Lay Perſon ſhould give any Eccleſiaſtical Benefice. This is the firſt Queſtion that ever was made touching the King of *England*'s Right of Patronage and Donation of

Biſhopricks

Biſhopricks within his Dominions. This new Queſtion cauſed many Meſſages and Embaſſies to *Rome*; at laſt the King wrote plainly to the Pope, *Notum habeat Sanctitas veſtra, quod me vivente (Deo auxiliante) Dignitas & uſus Regni noſtri non minuentur, & ſi ego (quod abſit) in tanta me directione ponerem, Magnates mei, imo totius* Angliæ *Populus id nullo modo pateretur.* Beſides, *William de Warrenaſt*, the King's Procurator in the Court of *Rome*, told the Pope, that the King would rather loſe his Kingdom than he would loſe the Donation of Biſhopricks; the Pope anſwered, know you preciſely, Sir, I ſpeak it before God, that for the Redemption of my Head I would not ſuffer him to injoy it. After this, *Anſelme* being received into the King's Favour, in a Synod of the *Engliſh* Clergy, holden at *London anno* 1107, a Decree was made, *cui annuit Rex* Henricus, ſaith *Matt. Paris*, that from thenceforth *nunquam per donationem paſtoralis vel annuli quiſquam in Epiſcopatu, vel Abbathia, per Regem vel quemlibet Laicum manu inveſtiretur in* Anglia. In Recompence whereof the Pope yielded, that thenceforth no Legate ſhould be ſent from the Pope's Side into *England*, unleſs the King required it, and that the Archbiſhop of *Canterbury*, for the Time being, ſhould be for ever *Legatus natus.* And *Anſelme* for the Honour of his See obtained, that the Archbiſhop of *Canterbury* ſhould in all General Councils ſit at the Pope's Feet, *tanquam alterius Orbis Papæ.* Notwithſtanding, as the ſucceeding Popes kept not their Promiſes, touching the ſending of Legates; ſo this ſelf-ſame King, after the

the Death of *Anſelme*, broke the Decree touching the Inveſtiture of Biſhops; for he gave the Archbiſhoprick of *Canterbury* to *Rodolph*, Biſhop of *London*, ſaith *Mat. Paris*, *& illum per Annulum & Paſtoralem Baculum inveſtivit*, as before he had inveſted *William Gifford* in the Biſhoprick of *Winton*, *contra novi Concilii Statuta*, as the ſame Author reporteth. *Dav.* 90. *a. b.*

10. The Times of King *Stephen* were full of Civil Diſſentions, which laid the Land almoſt Waſte; ſo as *St. Peter's* Succeſſor could catch no Fiſh in ſuch troubled Waters; ſave that during this King's Reign they won that Point of Juriſdiction, which they attempted to get, but failed thereof in the Time of *William Ruſus*, namely, that Appeals might be made to the Court of *Rome*; for in a Synod at *London*, ſummoned by *Henry*, Biſhop of *Wincheſter*, the Pope's Legate, it was decreed, that Appeals ſhould be made from Provincial Councils to the Pope. Before that Time *Appellationes in uſu non erant*, ſaith a Monk of that Time, *donec* Henricus Winton *Epiſcopus malo ſuo dum Legatus eſſet crudeliter intruſit.* Thus did the Pope uſurp three main Points of Juriſdiction upon three ſeveral Kings after the Conqueſt (for of *William Ruſus* he could win nothing) namely, upon the Conqueror, the ſending of Legates or Commiſſioners to hear and determine Eccleſiaſtical Cauſes; upon *Henry* the Firſt, the Donation and Inveſtiture of Biſhopricks and other Benefices; upon King *Stephen*, Appeals to the Court of *Rome*. *Dav.* 90. *b.*

11. In *Hen.* 2d's Time they made a further Incroachment on the Crown, which tended to reduce him to Half a King, and to take away Half his Subjects, by exempting all Clerks from the Secular Power; and hereupon it was that great Contention aroſe between the King and the Clergy, and particularly that *Black Saint, Thomas à Becket*, which on *Becket*'s Behalf may rightly be termed Rebellion and Treaſon; the juſt Cauſe and Ground whereof was the ſame which made the Difference between the Pope and the *Venetians*: For a Prieſt had committed a foul Murder, and being thereof indicted and convicted, prayed the Benefit of his Clergy, which being allowed to him, he was delivered to the Biſhop of *Saliſbury*, being his Ordinary, to make his Purgation, which the Murderer failing to do, ſhould by Law have been degraded, and delivered back to the Secular Power; but the Biſhop, *pious Man*, contemning the Law of the Land to enlarge the Liberties of the Church, ſent his Priſoner *to the black Saint*, then Archbiſhop of *Canterbury*, *a moſt monſtrous Traitor*, who ſhuffled him into an Abbey, and ſo reſcued him, *a moſt notorious and wicked Murderer*, from the Capital Puniſhment he had juſtly deſerved. This Gap of Impunity being once opened, the Clergy grew ſo outragious, as the King was informed of an hundred Murders, or more, committed by Clerks, and yet not one of them executed for the ſame; for that this *Engliſh Pope*, the Archbiſhop, had protected them all after the ſame Manner. On theſe Accounts the King was juſtly incenſed againſt the

It would be a fine World indeed, ſays Father *Paul*, if the Clergy were to be exempt from obeying their Temporal Sovereign, and could be as wicked as they liſt, in ſpite of his Teeth, &c.

the Archbiſhop, who juſtify'd his doing herein. Whereupon a Common Council, as well of the Biſhops as of the Nobility, was called, wherein they did revive and re-eſtabliſh the ancient Laws and Cuſtoms of the Kingdom for the Government of the Clergy and ordering of Cauſes Eccleſiaſtical, whereof theſe were the principal Heads, or Articles. 1. That no Biſhop or Clerk ſhould depart the Realm without the King's Licence, and that ſuch as obtained Licence ſhould give Security that they ſhould procure no Hurt or Damage to the King or Realm during their Abſence in foreign Parts. 2. That all Biſhopricks and Abbies, being void, ſhould remain in the King's Hands, as his own Demeſnes, until he had choſen and appointed a Prelate thereto, and that every ſuch Prelate ſhould do his Homage to the King, before he was admitted into the Place. 3. That Appeals ſhould be made in Cauſes Eccleſiaſtical from the Archdeacon to the Ordinary, from him to the Metropolitan, from him to the King, and no farther. 4. That *Peter-pence* ſhould be no more paid to the Pope, but to the King. 5. That if any Clerk ſhould commit Felony, he ſhould be hanged; if Treaſon, he ſhould be drawn and quartered. 6. That it ſhould be adjudged High Treaſon to bring in Bulls of Excommunication, whereby the Realm ſhould be cured. 7. That no Decree ſhould be brought from the Pope to be executed in *England* on Pain of Impriſonment and Confiſcation of Goods. To theſe and other Conſtitutions of like Nature, made at *Clarendon*, all the Biſhops and

Great Men did ſubſcribe, and bound themſelves by Oath to obſerve the ſame abſolutely; only the Archbiſhop would not ſubſcribe and ſwear, but with a Saving; *Salvo ſuo Ordine & Honore Sanctæ Eccleſiæ*; yet at laſt he was content to make the like abſolute Subſcription and Oath as the Reſt had done; but preſently, under Pretence of Repentance, ſuſpended himſelf from celebrating Maſs till he had received Abſolution from the Pope, and then fell again to maintain and juſtify the Exempting of Clerks; whereat the King being irritated, the Archbiſhop again promiſed abſolute Obedience to the King's Laws. (See the Fickleneſs and Mutability of this falſe Martyr). The King, to bind faſt this ſlippery *Proteus*, called a Parliament of the Biſhops and Barons, and ſending for the Roll of thoſe Laws, required all the Biſhops to ſet their Seals thereunto, who all aſſented but the Archbiſhop, who proteſted he would neither ſet his Seal nor give Allowance to thoſe Laws. The King, being offended with his rebellious Demeanour, required the Barons in Parliament to give Judgment of him, who being his Subject would not be ruled by his Laws, *Citò facite mihi Juſtitiam de illo qui homo meus Ligeus eſt, & ſtare Juri in Curia mea recuſat.* Whereupon the Barons proceeded againſt him, and being ready to condemn him; I prohibit you (quoth the Archbiſhop) in the Name of Almighty God to prodeed againſt me; for I have appealed to the Pope, and ſo departed in Contempt of that high Court; *Omnibus clamantibus* (ſaith *Hovenden*) *quo progrederis, proditor, expecta*

& audi Judicium tuum. After this he lurked ſecretly near the Sea-ſhore, and changing his Apparel and Name, like a Jeſuit (*ſaith the Reporter*) of thoſe Times, he took Shipping with a Purpoſe to fly to *Rome*; but his Paſſage being hinder'd by contrary Winds, he was ſummoned to a Parliament at *Northampton*, where he made wilful Default; for which Contempt his Temporalties were ſeis'd and his Body attached, and he found, on Account, in ſo great an Arrear to the King as 30000 Marks, and committed to Priſon, from whence ſoon after having made his Eſcape, he went to *Rome*, and he was no ſooner gone than the King ſent Writs to all the Sheriffs in the Land to attach the Bodies of all ſuch as made any Appeals to the Court of *Rome*. Hereupon, many Meſſages and Letters paſſing to and fro, all the Suffragans of *Canterbury* joined in a Letter to the Pope, wherein they condemn the fugitive Archbiſhop and juſtify the King's Proceedings. Upon this the Pope ſends two Legates to the King, (then in *Normandy*) to mediate for the Archbiſhop; and they with the *French* King's Mediation ſo far prevailed with the King, that he was pleaſed to accept his (*the Rebel's*) Submiſſion once more, and promiſed the *French* King, that if he would be obedient to his Laws, he ſhould enjoy as ample Liberties as any Archbiſhop of *Canterbury* ever had; and ſo ſent him into *England* with Recommendations unto the young King his Son, then lately crown'd, who, hearing of his coming, commanded him to forbear coming into his Preſence till he had abſolved

ed the Archbiſhop of *York* and others, hom he had excommunicated for perform- g their Duties at his Coronation. The rchbiſhop anſwered, They had done him rong in uſurping his Office; yet if they ould take a ſolemn Oath to become obe- ent to the Pope's Commands in all Things ncerning the Church, he would abſolve em, which they refuſed, unleſs the King illed them thereunto. King *Henry*, the ather, being hereof advertiſed in *France*, d being in a great Paſſion, in the Hearing ſome of his Attendants, ſaid to this Effect, Will no Man rid me of my Enemies? hereupon the four Gentlemen named in iſtory came into *England*, and firſt mo- ng the Archbiſhop to abſolve the Biſhops hom he had excommunicated for perform- g their Duties at the young King's Coro- tion, receiving his peremptory Denial, w him; for which the King was fain not ly to ſuffer corporal Penance; but, in oken of his Humiliation, to kiſs the Knee the Pope's Legate; and this is the A- idgment (*ſaith the Reporter*) of *Becket's* roubles, or rather Treaſons, for which he s celebrated for ſo famous a Martyr. And us you ſee (*ſaith the Reporter*) by what egrees the Court of *Rome* did within the ace of One hundred and odd Years uſurp on the Crown of *England* four Points of riſdiction, *viz.* 1ſt, Sending Legates into *gland.* 2dly, Drawing Appeals to the urt of *Rome.* 3dly, Donations of Bi- opricks, and other Eccleſiaſtical Benefices, d 4thly, Exemption of Clerks from the cular Power; and you ſee alſo (*ſaith he*)

withal, how our Kings and Prelates hav
from Time to Time oppoſed and withſtoo
theſe unjuſt Uſurpations. *Dav.* 90. *b.* 9
a. b. 92. *a. b.*

12. 'Tis true (ſaith Lord *Hale*) *Thom*
Becket, Archbiſhop of *Canterbury*, bold
ly and inſolently took upon him to de
clare many of the ſixteen Articles again
the Inſolence and Uſurpation of the Clergy
enacted in *Hen.* 2d's Reign, to be void, e
ſpecially theſe five mentioned in his Epiſt
to his Suffragans, recorded by *Hoveden*
1ſt, That there ſhould be no Appeal to th
Biſhop without the King's Licence. 2dly
That no Archbiſhop or Biſhop ſhould g
over the Seas at the Pope's Command wit
out the King's Licence. 3dly, That th
Biſhop ſhould not excommunicate the King
Tenants *in Capite*, without the King's Li
cence. 4. That the Biſhop ſhould not hav
the Cognizance of Perjury or *Fidei Læſion*
5. That the Clergy ſhould be convened be
fore Lay Judges, and that the King
Courts ſhould have Cognizance of Church
and of Tithes. *Hale Hiſt. Law* 137, 138.

13. On *Hen.* 2d's Conqueſt of *Irelan*
after the ſame was ratified to him by th
Fealty of the Nobles and Biſhops, Pope A
lexander by Bull confirmed the ſame, bein
willing to intereſt himſelf in that Buſine
to ingratiate himſelf with the King, and t
gain a Pretence for that arrogant Uſurp
tion of diſpoſing of Temporal Dominion
Vide Hovenden, *Anno* 14 *H.* 2. *Ha. Hi*
Law 145.

14. The Pope having thus as aforeſa
gained almoſt full and ſole Juriſdiction

l Cauſes, and over all Perſons Eccleſiaſti-
l, with Power to diſpoſe of all Eccleſiaſti-
l Benefices, ſo as he had gotten an abſo-
te Conqueſt of more than one Half of the
ingdom; for every one that could read
e Pſalm of *Miſerere* was a Clerk, and the
lergy poſſeſs'd a Moiety of all Temporal
oſſeſſions: There remain'd nothing to
ake him Proprietor of the Whole, but to
et a Surrender of the Crown, and to make
e King his Farmer and the People his Vil-
ins, which he fully brought about in the
ime of King *John*, and of *H.* 3. The Quar-
l between the Pope and King *John*, and
hich wreſted the Scepter out of his Hand,
nd in the End broke his Heart, began about
e Election of the Archbiſhop of *Canterbury*.
call it Election (ſaith the Reporter) and not
Donation or Inveſtiture; for the Manner of
veſting Biſhops with the Staff and Ring
fter the Time of King *Hen.* 1. was not any
ore uſed; but by the King's Licence they
ere canonically elected, and being elected,
e King gave his Royal Aſſent thereto,
nd by Reſtitution of their Temporalties
id fully inveſt them. And tho' this Courſe
f Election began to be in Uſe in the Time
f *R.* 1. and *H.* 2. yet I find it not con-
rmed (ſaith our Author) by any Conſtitu-
ion or Charter before King *John*'s Time,
ho by his Charter dated 15 *Jan. Anno*
6. of his Reign, granted this Privilege to
e Church of *England*. The Story of the
Quarrel was: The See of *Canterbury* being
oid, the Monks of *Canterbury* ſuddenly and
ecretly, without the King's Licence, elected
ne *Reginold*, their Superior, to be Arch-

biſhop, who immediately poſted away to the Pope to be confirmed; but the Pope rejected him, becauſe not recommended by the King. Hereupon the Monks made Suit to the King to nominate ſome fit Perſon, to whoſe Election they might proceed. The King commends *John Grey*, Biſhop of *Norwich*, his Principal Counſellor, *&c.* who with a full Conſent was elected and admitted, and fully inveſted by the King. Theſe two Elections breeding a Contention which none might determine but the Pope, he gave a ſhort Rule in the Caſe, that both Elections were void, and cauſed ſome of the Monks of *Canterbury*, who were then at *Rome*, to proceed to the Election of *Stephen Langton*, lately made Cardinal at the Suit and Motion of the *French* King, who, being ſo elected, was forthwith confirmed and conſecrated by the Pope, and recommended to the King of *England* with a flattering Letter and a Preſent of four Rings ſet with precious Stones, which were of great Value and Eſtimation in thoſe Days: However the King, more priſing the Jewel of the Patronage of Biſhopricks, returned a round and kingly Anſwer to the Pope, that inconſiderately and raſhly he had made void the Election of the Biſhop of *Norwich*, and had cauſed *Langton*, a Man to him unknown, and bred up and nouriſh'd amongſt his mortal Enemies, to be conſecrated Archbiſhop, without any due Form of Election, and without his Royal Aſſent, which was moſt of all requiſite by the ancient Laws and Cuſtoms of his Realm. That he marvelled much,

much, that the Pope himſelf and the whole Court of *Rome* did not conſider what a precious Account they ought to make of the King of *England*'s Friendſhip, in regard that his Kingdom did yield them more Profit and Revenue than all the other Countries on this Side the *Alpes*. To conclude, he would maintain the Liberties of his Crown to Death, he would reſtrain all his Subjects from going to *Rome*. And ſince the Archbiſhops, Biſhops, and other Prelates within his Dominions were as learned and religious as any other in Chriſtendom, his Subjects ſhould be judged by them in Eccleſiaſtical Matters, and ſhould not need to run out of their own Country *To beg Juſtice at the Hands of Strangers*. Hereupon after a ſharp Reply, the Pope ſent forth a Bull of Malediction againſt the King and Interdiction againſt the Realm, whereby all the Churches in *England* were ſhut up, the Prieſts and religious Perſons were forbidden to uſe any Liturgies or Divine Service, to marry, to bury, or perform any Chriſtian Duty amongſt the People. This put the King in ſuch a Rage, that he, on the other Hand, ſeis'd the Temporalties of all the Biſhops and Abbots, and confiſcated the Goods of all the Clergy. Then the Pope by ſolemn Sentence at *Rome* depoſed the King, and, by a Bull ſent into *England*, diſcharged his Subjects from their Allegiance; and by a Legate ſent to the *French* King gave the Kingdom of *England* to him and his Succeſſors for ever. Theſe Things brought ſuch Confuſion and Miſery to all Sorts of People, that the King be-

came odious to the People, as well Laity as Clergy; for as Biſhops and People of Religion curſed him abroad, ſo the Barons took Arms againſt him at home; 'till with much Bloodſhed they forced him, by granting the great Charter, to reſtore King *Edward's* Laws, containing the antient Liberties of the Subjects of *England*. The Pope being a Spectator of this Tragedy, and ſeeing the King in ſo weak and deſperate a State, ſent a Legate to comfort him, and to make a reaſonable Motion (*as they moſt unreaſonably were pleas'd to call it*), (to wit) that he ſhould ſurrender and yield up his Crown and Kingdom to the Pope, which ſhould be regranted to him to hold again in Fee-Farm and Vaſſalage of the Church of *Rome*; and that thereupon this *merciful* Pope would bleſs him and his Realm again, and curſe his Rebels and Enemies in ſuch a Manner that he ſhould be better eſtabliſhed in his Kingdom than before; which Motion being preſently embraced by that unhappy Prince, he with his own Hands ſurrender'd up the Crown to the Pope's Legate, and by an Inſtrument or Charter ſealed with a Bull or Seal of Gold he granted to GOD and the Church of *Rome*, the Apoſtles *Peter* and *Paul*, and to Pope *Innocent* the Third, and his Succeſſors, the whole Kingdom of *England* and the whole Kingdom of *Ireland*; and took back an Eſtate thereof, by an Inſtrument ſealed with Lead, yielding yearly to the Church of *Rome*, over and above the Peter-pence, a thouſand Marks *Sterling*, *viz.* Seven hundred Marks for *England* and Three hundred Marks for *Ireland*, with

with a flattering Saving of all his Liberties and Royalties. And this *innocent* Pope had no ſooner gotten this Conveyance (tho' a void one in Law) but he excommunicates the Barons, and repeals the great Charter, affirming that it contained Liberties too great for his Subjects; calls the King his Vaſſal, and theſe Kingdoms St. *Peter*'s Patrimony; grants a general Bull of Proviſion for beſtowing of all Eccleſiaſtical Benefices, and takes upon him to be abſolute and immediate Lord of all: And thus, under Colour of exerciſing Juriſdiction within theſe Kingdoms, the Pope by Degrees, got the very Kingdoms themſelves; and ſo would he do (as our Author ſaith) at this Day, if the King would give Way to his Juriſdiction. But what Uſe did the Pope make of this Grant and Surrender of the Crown unto him? What got he by it, if our Kings ſtill retained the Profits of theſe Kingdoms to their own Uſe? We do not find that this Fee-Farm Rent of one Thouſand Marks was ever paid; but that it has ever ſince remained in Arrear. But the Truth is, as our Reporter ſaith, the Court of *Rome* ſcorned to accept ſo poor a Revenue out of two Kingdoms. *Dav.* 92. *b.* 93. *a. b.* 94. *a.*

The Pope and Clergy taking Advantage of King *John*'s Troubles uſurped upon him, and ſo increaſed and aggravated thoſe Diſtempers, which ended in Confuſion with this unhappy Prince's Death. *Hale's Hiſt. Law* 153, 154.

15. After the Death of King *John*, during all the Reign of his Son *H.* 3. the Pope claimed no Seigniory or Rent out of *England* and *Ireland*, *or either of them*; but endeavoured, *with all his Might and Main*, to convert

convert the whole Profits of both Realms to his own Uſe, as tho' he had been ſeiſed of the whole *en ſon demeſne*; for whoſoever will read *Matt. Paris*'s Story of the Time of *H.* 3. will ſay the ſeveral Things before related were but the Beginnings of Evils; for the Exactions and Oppreſſions of the Court of *Rome* were ſo continual and intolerable, as that poor Monk, who lived in thoſe Times, (tho' otherwiſe he adored the Pope) called *England Baalam*'s Aſs loaden, beaten, and enforced to ſpeak: He called the Court of *Rome Charybdis* and *Baratrum avaritiæ*; the Pope's Collectors he called *Harpies*, and the Pope himſelf a Stepfather, and the Church of *Rome* a Stepmother: He ſhews that two Thirds of the Lands being then in the Hands of Churchmen, the whole Profits thereof were exported to inrich the Pope and the Church of *Rome*; which was done chiefly by theſe two Ways and Means. *1ſt*, By conferring the beſt Eccleſiaſtical Benefices upon *Italians* and other Strangers reſident in that Court, whoſe Farmers and Factors in *England* took the Profits, turned them into Money, and returned the Money to *Rome*. *2dly*, By impoſing continual Taxes and Tallages, being ſometimes a Fifteenth, ſometimes a Tenth, ſometimes a Third, and ſometimes a Moiety of all the Goods both of Clergy and Laity, under Colour of maintaining the Pope's Holy Wars againſt the Emperor and *Greek* Church, who were then ſaid to be in Rebellion againſt their Lady and Miſtreſs, the Church of *Rome*. Beſides, for the ſpeedy Levying and ſafe Return of theſe Monies, the Pope had his

Lombards

Lombards, and other *Italian* Bankers, and Uſurers, reſident in *London* and other Parts of the Realm, who returned the ſame by Exchange to *Rome*, taking ſuch penal Bonds, (the Form whereof is ſet down in *Mat. Paris*,) and ſuch exceſſive Uſury, as the poor religious Houſes were fain to ſell their Chalices and Copes, and the reſt of both Clergy and Laity had their Backs bowed, and their Eſtates broken under the Burden. And further, the Pope took for Perquiſites and Caſualties the Goods of all Clerks who died Inteſtate, the Goods of all Uſurers, and all Goods given to charitable Uſes. He had alſo a ſwarm of Fryars, (the firſt Corruptors of Religion in *England*) who perſwaded the Nobility and Gentry to put on the Sign of the Croſs, and to vow themſelves to the Holy Wars, which they had no ſooner done, but they were again perſwaded to receive Diſpenſations of their Vows, and to give the Church of *Rome* Money for the ſame. Our Reporter tells us, he omits divers other Policies then uſed by the Pope's Collectors to exhauſt the Wealth of the Realm, which, he ſays, they affirmed they might take with as good a Conſcience, as the *Hebrews* took the Jewels of the *Egyptians*. In ſhort, whereas the King had ſcarce Means to ſupport his Royal Family, they received *immenſe* Riches. And thus we ſee the Effect of the Pope's pretended Juriſdiction within the Dominions of the King of *England*: We ſee to what Calamity it then reduced both Prince and People. Was it not therefore high Time to meet and oppoſe thoſe Inconveniences, *and helliſh Incroachments of this over-*

over-grown Monſter, ſo falſly called the thirteenth Apoſtle and what not. Aſſuredly, had *Edward* the Firſt, who was the Son and Heir of *Henry* the Third, inherited the Weakneſs of his Father, and had not reſiſted this Uſurpation and Inſolence of the *Pope* and Court of *Rome*, the Pope had been Proprietor of both theſe Iſlands, *&c.* *Dav.* 94. *a. b.* 95. *a.*

16. *In* Ed. I.*'s wiſe and glorious Reign the Pope, nor his Engines, or Miniſters of Spiritual Tyranny and Horror, could gain no Ground; but on the contrary, loſt many of thoſe Incroachments they had gained in former Reigns.*

17. *King* E. 2. *being a weak Prince, the Pope endeavoured to uſurp upon him; but was ſtrongly oppoſed by the People.*

18. *During the next Reign, namely,* E. 3. *this Grand Impoſter gained as little Ground, as in any of the former.*

19. *During the Nonage of* R. 2. *they began once more to attempt their Incroachments upon the Crown, by ſending Legates, Bulls, Brieſs,* &c. *ſo as to give juſt Occaſion to that neceſſary Law, called the Statute of Proviſors of the 16th of this Reign, which put a Stop to their Incroachments. For the Courſe of the Uſurpations of the Court of* Rome, *and the refractory and traiterous Incroachments of the ungrateful and diſloyal Clergy to their natural and rightful Sovereigns, ſee Mr. Serjeant* Hawkins *in his* Pl. Cor. *Tit.* Præmunire, &c. *and the Hiſtories of the ſeveral ſubſequent Reigns,* &c.

2. *The*

3. *The Oppoſitions the ſame have met with.*

1. *General.*

1. THE Council of *Carthage* and the *African* Biſhops firſt forbid Appeals to *Rome*, and oppoſed the Supremacy of the Pope. *Dav.* 88. *a.*

2. *Pelagius*, the Monk of *Bangor*, about the Year 400, being cited to *Rome* refuſed to appear upon the Pope's Citation, affirming that *Britain* was neither within his Dioceſe nor his Province. *Dav.* 88. *b.*

3. After the Biſhop of *Rome* had aſſumed and taken upon him to be a Spiritual Prince and Monarch of all the World, he attempted to give Laws to all Nations, as a real Mark of his Monarchy; but he very well knowing *quod ubi non eſt condendi autoritas, ibi non eſt parendi neceſſitas*, did not impoſe his Laws at firſt peremptorily upon all People *ſans* Diſtinction, but offered them *timide & precario*; and therefore he cauſed certain Rules at firſt to be collected for the Government of the Clergy only, which he called *Decreta* and not *Leges vel Statuta*; and theſe Decrees were publiſh'd *anno* 1150, which was in King *Stephen*'s Reign, who prohibited them. The Biſhop of *Rome* did all he could to draw the Laity to Obedience to his Ordinances; and to this End firſt he pronounced certain Rules or Ordinances for Abſtinence or Days of Faſting to be obſerved by the Laity, as well as Clergy, which at firſt were called

called by the gentle Word *Rogationes*, as *Marſilius Pat. Lib. Defenſor Pacis*, *Part* 2. *c.* 23. hath obſerved, and from thence, as it ſeems, the Week of Abſtinence, next before the Feaſt of *Pentecoſt* or *Whitſuntide*, was called *Rogation-Week*. This Time of Abſtinence being appointed by an Ordinance, which was called *Rogation*, and not *Præceptum*, *vel Statutum*. When Laymen, of their Devotion, had received and obeyed theſe Ordinances, then the Biſhop of *Rome* proceeded farther, (*De una præſumptione ad aliam tranſivit* Romanus *Pontifex*, as *Marſilius Pat.* ſays) and made many Reſcripts and Orders *per nomen Decretalium*, which were publiſhed *anno* 1230, which was *anno* 14 *H.* 3. or thereabouts; *vide Mat. Paris Hiſt. Mag.* 403. and were made to bind all the Laity, as well Sovereign Princes as their Subjects, in Matters concerning their Civil and Temporal Eſtates; as that no Layman ſhould have the Donation of Eccleſiaſtical Livings, that no Layman ſhould marry within ſuch Degrees; without the Limits of the *Levitical* Law; that all Children, born before Marriage, ſhould after Marriage be adjudged Legitimate and capable of Temporal Inheritances; that all Clerks ſhould be exempt from Secular Power, *&c.* *Dav.* 69. *b.* 70. *a.* But theſe Decretals, tho' publiſhed, were not intirely and abſolutely received and obeyed in any Part of Chriſtendom, but only in the Temporal Territory of the Pope, which is called by the Canoniſts *Patria Obedientiæ*; but on the contrary were utterly rejected and diſobeyed in *England* and *France*, and other Chriſtian Realms, which are

alled *Patriæ Conſuetudinariæ*. As for In-ance, the Canon which prohibits the Do-ation of Benefices *per manum Laicum*, which as always diſobeyed in *England*, *France* nd *Naples*, and ſeveral other Countries: lſo the Canon to make Infants Legitimate, hich were born before Eſpouſals, was eſpe-ially rejected in *England* in the Parliament t *Merton*, *Omnes Comites & Barones una voce eſponderunt*, *Nolumus Leges* Angliæ *mutari quæ ucuſque uſitatæ ſunt*, *&c.* And the Canon hich exempts Clerks from the Secular ower was not fully obſerved in any Part f Chriſtendom. *Keilw.* 7 *H.* 8. 181. *b.* which s an infallible Rule that theſe Ordinances ave not their Force from any Authority hich the Court of *Rome* had to impoſe Laws upon all Nations, without their Con-ſent, but by the Approbation and Uſage of he People who received and uſed them; for by the ſame Rule and Reaſon that they might reject one Canon they might reject all. *Vide Bodin. Lib.* 1. *de Rep. Cap.* 8. where he ſaith, that the Kings of *France*, upon the Erecting of all their Univerſities there, have declared in their Charters, that they will receive the Profeſſion of the Civil and Ca-non Laws to uſe at their Diſcretion, and not to be bound by thoſe Laws. *Dav.* 70. *b.*

4. Long before *H.* 8. was born, divers Laws were made againſt the Uſurpation of the Biſhop of *Rome* upon the Rights of the Crown, well nigh as ſharp and as ſevere as any Statutes which have been made in later Times; and yet then the King, the Lords and Commons, which made ſuch Laws, and the Judges who interpreted them, did for the

the moſt part (*nay, I may ſay altogether*) follow the ſame Opinions in Religion which were held and taught in the Court of *Rome*. *Dav.* 85. *a.*

5. The Law-makers in all Ages, as well Papiſts as Proteſtants, as well Clergy as Laity, oppoſed the Pope's Uſurpations, eſpecially here in theſe Realms. *Dav.* 87. *a. b.*

6. When *Auguſtine*, the Monk, was ſent hither about *anno* 600 by *Gregory* the Great to convert the *Saxons* to Chriſtianity, the *Britiſh* Biſhops, then remaining in *Wales*, regarded neither his Commiſſion nor his Doctrine, but ſtill retained their Ceremonies and Traditions, which they received from the *Eaſt* Church, on the firſt Plantation of the Faith in this Iſland, being diverſe and contrary to the See of *Rome*, which *Auguſtine* endeavoured to impoſe upon them. *Dav.* 88. *b.* The like doth *Beda* write of the *Iriſh* Prieſts and Biſhops. *Dav.* 88. *b.*

7. *Beda* reporteth, that in the Year 660, a Convocation of the Clergy being called by King *Oſwif*, a Diſpute aroſe between *Colman*, an *Iriſh* Saint, then preſent in that Synod, and *Wilfrid*, a *Saxon* Prieſt, touchng the Obſervation of *Eaſter*, wherein the *Britiſh* and *Iriſh* Churches did then differ from *Rome*. *Colman*, for the Celebration of *Eaſter* then uſed in *Ireland*, affirmed it was the ſame *quod beatus Evangeliſta* Johannes, *Diſcipulus ſpecialiter a Domino dilectus, in omnibus, quibus præerat, Eccleſiis celebraſſe legitur.* On the other Part *Wilfred* alledged, that all the Churches of Chriſtendom then celebrated *Eaſter* after the *Roman* Manner, except the Churches of the *Britons* and *Picts*, *qui contra totum orbem* (ſaith

ſaith he) *ſtulto labore pugnant.* Whereunto *olman* replied, *Miror quare ſtultum laborem ppellas, in quo tanti Apoſtoli, qui ſuper pectus omini recumbere dignus fuit, exempla ſecta- ur. Numquid reverendiſſimum patrem noſtrum olumbam, & ejus ſucceſſores, Viros a Deo lectos, divinis paginis contraria ſapuiſſe aut giſſe credendum eſt?* In this Diſpute two hings may be obſerved; firſt, that at this ime the Authority of the Biſhop of *Rome* as of no Eſtimation in theſe Iſlands; next, hat the Primitive Churches of *Britain* and *eland* were inſtituted according to the Form nd Diſcipline of the *Eaſt* Churches, and ot of the *Weſt*, and planted by the Di- iples of *John*, and not of *Peter.* Thus uch for the Time of the *Britons.* Dav. 88. b. 8. This Kingdom has always been very alous of giving too much Countenance to ther the Civil, or Canon, or Eccleſiaſtical aws, and has always ſhewn a juſt Indig- ation and Reſentment at any Incroach- ent of that Kind, either by the one Law, r by the other. It is true, that in the Ad- iralty and Military Courts the Civil Law as been in ſome Particulars admitted; and o in the Eccleſiaſtical Courts the Canon aw has been in ſome Particulars alſo ad- itted; but ſtill they carry ſuch Marks nd Evidences about them, whereby it may e known that they bind not, nor have he Authority of Laws from themſelves, ut from the authoritative Admiſſion of this ingdom: But never were admitted to be he Rule of the Adminiſtration of common uſtice in this Kingdom. *Hale's Hiſt. Law* 1.

9. The People of *England* were ever zealous for their Municipal Laws and Cuſtoms, and that no leſs, than they are now for the Great Charter, in ſo much that they were never ſatisfied, until the ſaid Laws were reinforced and mingled with the Coronation Oath. *Hale's Hiſt. Law* 85.

10. Tho' the Kings of *England* were abſolute Emperors within their Dominions, and under them as learned a Prelacy and Clergy, as valiant and prudent a Nobility, as free and wealthy a Commonalty, as any at the Time in Chriſtendom; yet if we look back into the Stories and Records of theſe two Imperial Kingdoms of *England* and *Ireland*, we ſhall find, that if the Laws of Proviſion and *Præmunire* had not been, they had loſt the Name of Imperial and Kingdoms too, and been long ſince tributary and Provinces to the Biſhop of *Rome*, or rather Part of St. *Peter*'s Patrimony in Demeſne. Our Kings had had their Scepters wreſted out of their Hands, their Crowns ſpurned from their Heads, their Necks trod upon, *&c.* as ſome of the Emperors and *French* Kings were. Our Prelates had been made his Chaplains and Clerks, our Nobility his Vaſſals and Servants, our Commons his Slaves and Villeins, if theſe Acts of Manumiſſion had not freed them. In a Word, before the making of theſe Laws, the flouriſhing Crown and Commonwealth of *England* was in great Danger to have been brought into moſt miſerable Servitude and Slavery, under Colour of Religion and Devotion, to the See of *Rome*; and this was not only ſeen and felt by the King, and much

much repined at and proteſted againſt by the Nobility, but the Commons, the general Multitude of the Subjects, did exclaim and cry out upon it; and the Act of 16 *R.* 2. was made at the Prayer of the Commons, which Prayer they made not for themſelves (as in ſome Bills of Grievances) but out of Love and Zeal to the King and his Crown. Their Petition is to the King to make a Law for the Defence and Maintenance of his own Honour: They complain, that by Bulls and Proceſſes the King is deprived of that Juriſdiction which of Right belongs to his Imperial Crown: That he thereby loſeth the Service and Counſel of his Prelates and learned Men by Tranſlations made by the Biſhop of *Rome:* That the King's Laws were defeated at the Will of the ſaid Biſhop, the Treaſure of the Realm exhauſted and exported to inrich his Court; and that by theſe Means the Crown of *England*, which hath been ever free and ſubject to none, but immediately under God, ſhould be ſubmitted to that Biſhop. And thereupon, out of their exceeding Zeal and Fervency, they offer to live and die with the King in Defence of the Liberties of the Crown. And then, laſtly, they pray and require the King by way of Juſtice, to examine all the Lords in Parliament, what they thought of theſe manifeſt Wrongs and Uſurpations, and whether they would ſtand with the King in Defence of his Royal Liberties or no? Which the King did according to their Petition: And the Lords Spiritual and Temporal did all anſwer, that theſe Uſurpations of the Biſhop of *Rome* were againſt the

Liberties of the Crown, and that they were all bound by their Allegiance to ſtand with the King, and to maintain his Honour and Prerogative; and thereupon it was enacted with a full Conſent of the three Eſtates (*prout* in the Statute). *Dav.* 85. *a. b.* 86. *a.* Upon theſe Motives, and with this Affection and Zeal of the People was the Statute 16 *R.* 2. made. *Dav.* 86. *a.*

11. Heretofore the Church of *Rome*, under Pretence of her Supremacy, and the Dignity of St. *Peter*'s Chair, took upon her to beſtow moſt of the Biſhopricks, Abbies, and other Eccleſiaſtical Livings of Worth here in *England*, by Mandates before they were void, pretending therein a great Care to ſee the Church provided of a Succeſſor before it needed. Whence it aroſe, that theſe Mandates or Bulls were called *Gratiæ Expectativæ*, or Proviſions; whereof you may read a learned Diſcourſe in *Duarenus de Beneficiis*, *Lib.* 3. *cap.* 1. Theſe Proviſions were ſo rife with us, that at laſt King *Ed.* 3. not digeſting ſo intolerable Incroachments, made a Statute in the 25th Year of his Reign, *cap.* 22. and another *Stat.* 6 *C.* 1. and a Third, *Anno* 27, againſt thoſe who drew the King's People out of the Realm to anſwer Things belonging to the King's Courts; and another, *Anno* 28. *Stat.* 2 *C.* 1, 2, 3 & 4. whereby he greatly reſtrained this Liberty of the Pope, who notwithſtanding ſtill adventured to continue the Proviſions, inſomuch that King *R.* 2. likewiſe made ſeveral Statutes againſt them, but moſt expreſly that 16 *R.* 2. *cap.* 5. which appointed their Puniſhment to be thus, That they ſhould be

out

out of the King's Protection, attached by their Bodies and loſe their Lands, Tenements, Goods and Chattels. After him King *H.* 4. in like Manner aggrieved at other Abuſes not fully met with in the former Statutes, in the ſecond Year of his Reign, *Anno* 3 & 4. adds certain new Caſes, and lays upon the Offenders in them the ſame Puniſhment. Whereto I refer you, as likewiſe to *Anno* 9. *ejuſdem*, *cap.* 8. and 3 *H.* 5. *cap.* 4. and *Smith de Republ. Angl. Lib.* 3. *cap.* 9. Some later Statutes caſt this Puniſhment, as namely, that 1 *Eliz. cap.* 2. upon him who denies the King's Supremacy the ſecond Time, and 13 *Eliz. cap.* 2. upon ſuch as are ſeditious Talkers of the Inheritance of the Crown, or affirm the Queen to be an Heretick, and 13 *Car.* 2. *cap.* 1. upon ſuch as affirm the Parliament begun at *Weſtminſter* 3 *Nov.* 1640, is not yet diſſolved, or that there is any Obligation, by any Oath, Covenant, or Engagement whatſoever, to endeavour a Change of Government, either in Church or State; or that both, or either Houſe of Parliament have or hath a legiſlative Power without the King. *Blo. Law Dict. ſub. Tit. Præmunire.* But our preſent Buſineſs being only to deal with Eccleſiaſtical Perſons, Laws and Courts, we ſhall meddle with no more than what immediately relates to them.

2. *The Courſe of ſuch Oppoſition ſince the Conqueſt.*

1. But to return to my propoſed Method. *William* the Firſt, commonly called the

Conqueror, inſtituted the Courts for holding the Pleas of Eccleſiaſtical Cauſes to be ſeparate and diſtinct from thoſe Courts that had Juriſdiction of Civil Cauſes. *Ha. Hiſt. Law* 102, 109.

2. *William* the Conqueror reſtrained the Clergy and their Courts from exerciſing Eccleſiaſtical Juriſdiction upon Tenants *in Capite*. Ha. Hiſt. Law 109.

3. In *Hen.* 2d's Time, this ancient Law was revived, that Peter-pence ſhould not be paid to the Pope. *Dav.* 90. *b.* 91 & 92.

4. King *Stephen* prohibited the Pope's *Decreta*, which were calculated as a Beginning or firſt Step to abſolute and univerſal Rule. *Vide* this Diviſion, *General p.* 3. *&c.*

5. *H.* 2. By the Advice of his Council or Parliament at *Clarendon*, enacted thoſe ſixteen Articles mentioned by *Mat. Paris*, *Anno* 1164, and thereby checked the Pride, Inſolence and Uſurpation of the Pope and Clergy; thereby he reſtrained the exorbitant Power of Eccleſiaſticks, and the Exemption they claimed from Secular Juriſdiction. *Ha. Hiſt. Law* 144, 145.

6. *H.* 3. would not receive the Encroachments of the Biſhop of *Rome*, which he endeavoured to impoſe on Temporal Princes and their Subjects, *anno* 1230, being about the 14th Year of this Reign. See this Diviſion General, *p.* 3. *Keil.* 7 *H.* 8. 181. *b. Dav.* 70. *a. b.*

7. Mr. Attorney General *Davis* ſpeaking of King *Ed.* 1. ſaith, he may well be ſtyled, *Vindex Angliæ Libertatis*, the *Moſes* who delivered his People from Slavery and Oppreſ-

ſion;

ſion; and as he was a brave and victorious Prince, ſo he was the beſt *Pater Patriæ* that ever reigned in *England* ſince the *Norman* Conqueſt, till the Reign in which our Reporter wrote (which was that of *Jac.* 1. to whom he was willing to pay a Complement). At the Time of his Father's Death he was abroad in the Wars of the *Holy Land*, being a Principal Commander of the Chriſtian Army there, ſo as he return'd not before the ſecond Year of his Reign. But he was no ſooner returned and crowned, but the firſt Work he did was to ſhake off the Yoke of the Biſhop of *Rome*, who then having ſummoned a general Council, before he would ſuffer his Biſhops to attend that Council, he took of them a ſolemn Oath, that they ſhould not receive the Pope's Bleſſing. Again, the Pope forbids the King to war againſt *Scotland*; but the King regards not his Prohibition. Again, the Pope demands Firſt-Fruits of Eccleſiaſtical Livings, and the King forbids Payment thereof. The Pope ſends forth a general Bull prohibiting the Clergy to pay Subſidies or Tributes to temporal Princes (a Tenth being granted to the King by Parliament) the Clergy thought fit to refuſe Payment; whereupon the King ſeis'd their Temporalties for their Contempt, and ſo got Payment notwithſtanding *the Pope* and his *mad Bull*. Then the King made the Statute of Mortmain, and thereby *wiſely* broke the Pope's chief Net, which, in an Age or Two more would have drawn to the Church all the Temporal Poſſeſſions of the Kingdom, *&c.* Again, one of the King's Sub-

jects brought a Bull of Excommunication against another; whereupon the King commanded he ſhould be executed as a Traitor according to the ancient Law; but as that Law had not of long Time been put in Execution, the Chancellor and Treaſurer kneeled before the King and obtained Grace for the Offender, ſo as he was only baniſhed. And as it was judged Treaſon to bring in Bulls of Excommunication, ſo he held it a high Contempt againſt the Crown to bring in Bulls of Proviſion or Briefs of Citation; and accordingly the Law was ſo declared in Parliament 25 *E.* 1. which was the firſt Statute made againſt Proviſors. The Execution of which Law during the Life of *Ed.* 1. almoſt aboliſhed the uſurped Juriſdiction of the Court of *Rome*, and revived and reſtored again the ancient Sovereignty of the King and Crown of *England*. *Dav.* 95. *a. b.*

8. *Ed.* 1. check'd the Incroachments and Inſolencies of the Pope and the Clergy, by the Statute of *Carliſle*. *Ha. Hiſt. Law* 159.

9. By Statute of *Carliſle* 25 *E.* 1. It is declared, that the Biſhop of *Rome* uſurping the Seigniory of Benefices here, gave the ſame to Aliens, who never lived here, and to Cardinals who might not, *&c.* in Adnullation of the State of the Holy Church of *England*, Diſinheriſon of the King, Earls, Barons, and other Nobles of the Realm, and in Offence and Deſtruction of the Laws and Rights of this Realm, and againſt the good Diſpoſition and Will of the firſt Founders. It was therefore enacted by the

he King, by the Aſſent of all the Lords nd Commonalty in full Parliament, that he ſaid Oppreſſions, Grievances and Damages in this Realm from thenceforth ſhould ot be ſuffer'd, as by the ſaid Act appeareth. 5 *Co. De jure Regis Eccl.* 13. *b.*

10. This King declared the Limits and Bounds of the Eccleſiaſtical Juriſdiction by he Statute of *Circumſpecte Agatis & Articuli Cleri*; for note, though this later Statute was not publiſhed till *Ed.* 2d's Time; yet it was compiled in the Beginning of *Ed.* 1ſt's. *Ha. Hiſt. Law* 157, *&c.*

11. *Ed.* 1. made effectual Proviſion for Recovery of Advowſons and Preſentations to Churches, which were before infinitely lame and defective by the Stat. *Weſtm.* 2. *cap.* 1. Ha. Hiſt. Law 161.

12. King *Ed.* 2. being a weak Prince, the Pope endeavoured to uſurp upon him; but the Peers and People withſtood his Uſurpation; and when that unhappy Prince was depoſed, this was one of the moſt heinous Articles againſt him, namely, that he had given Allowance to the Pope's Bulls. *Dav.* 95. *b.*

13. During the Minority of *Ed.* 3. and after that in the Heat of the Wars in *France*, the Pope ſent many Breves and Bulls into *England*, and at laſt preſumed ſo far as to give an *Italian* the Title of Cardinal of *England*, and by his Bull gave him Power to beſtow all Eccleſiaſtical Promotions, as they ſhould from Time to Time fall void. This moved the King and Nobility to write to the Pope to this Effect: "We and our Anceſtors have "richly endowed the Church of *England*, "and

" and have founded Abbies and other Re-
" gious Houſes for the Juriſdiction of our
" People, for Maintenance of Hoſpitality,
" and for the Advancement of our Coun-
" trymen and Kinſmen. Now you provide
" and place Strangers in our Benefices that
" come not to keep Reſidence thereupon,
" and if they come, underſtand not our
" Language; and ſome of them are ſub-
" ject to our mortal Enemies; by Reaſon
" whereof our People are not inſtructed,
" Hoſpitality is not kept, our Scholars are
" unpreferr'd, and the Treaſure of the
" Realm exported." The Pope anſwer'd, The Emperor had lately ſubmitted himſelf to the Church of *Rome* in all Points, and was become the Pope's great Friend, and in a menacing Manner adviſed the King to do ſo too: The King reply'd, That if the Emperor and *French* King both ſhould take his Part, he was ready to give Battle to both in Defence of the Liberties of his Crown. Hereupon the ſeveral Statutes made before this Time were put in Execution ſo ſeverely, *or rather vigorouſly and juſtly*, that the King and his Subjects enjoyed their Right of Patronage clearly, and the Exemption of Clerks took no Place here at all; for that the Abbot of *Waltham* and Biſhop of *Winchester* were both attaint of High Contempts, and the Biſhop of *Ely* of a capital Offence, as appeareth in the Records of this King's Reign. *Dav.* 95. *b.* 96. *a.*

14. In the Stat. 25 *E.* 3. wherein the firſt Law of Proviſors made 25 *E.* 1. is recited, there is a larger Declaration of Inconveniencies than in either of the Statutes of 27 *E.* 3.

or

the 38th of the ſame King; for there all e Commons of the Realm do grievouſly mplain, that whereas the Holy Church of gland was firſt founded in Eſtate of Pre- y by the Kings and Nobility of the Realm, d by them endowed with great Poſſeſſions d Revenues in Lands, Rents and Advow- ns, to the End the People might be in- rmed in Religion, Hoſpitality might be pt, and other Works of Charity might be ercíſed within the Realm. And whereas e King and other Founders of the ſaid elacies were the rightful Patrons and Ad- wers thereof, and upon a Voidance of ch Eccleſiaſtical Promotions had Power to vance thereunto their Kinſmen, Friends, d other learned Men of the Birth of the ealm, which being ſo advanc'd became ble and worthy Perſons to ſerve the King Council and other Places in the Common- ealth. The Biſhop of *Rome* uſurping the eigniory of ſuch Poſſeſſions and Benefices, d give and grant the ſame to Aliens, who id never live in *England*, and to Cardinals hich might not dwell there; as if he were ghtful Patron of thoſe Benefices; whereas y the Law of *England* he never had Right o the Patronage thereof; whereby in ſhort ime all the Spiritual Promotions in the Realm would be ingroſſed into the Hands f Strangers, Canonical Elections of Prelates would be aboliſhed, Works of Charity would ceaſe, the Founders and true Patrons of Churches would be diſinherited, the King's Council would be weakened, the whole Kingdom impoveriſh'd, and the Laws and Rights of the Realm deſtroyed. Upon this Com-

Complaint it was reſolved in Parliament that theſe Oppreſſions and Grievances ſhould not be ſuffered in any Manner; and therefore, for redreſſing the Grievances and Oppreſſions therein mentioned, it was enacted That the King and his Subjects ſhould from thenceforth enjoy the Rights of Patronage that free Elections of Archbiſhops, Biſhops and other Prelates ſhould be made according to the ancient Grants of the King's Progenitors, and other Founders; that no Bull of Proviſions ſhould be put in Execution but that the Proviſors ſhould be attainted fined and ranſomed at the King's Will, and withal impriſoned till they had renounced the Benefits of their Bulls, ſatisfied the Party grieved, and given Security not to commit the like Offence again. *Dav.* 86. 87. *a.*

Where the Stat. of 25 E. 3. *de Proviſoribus* provideth, that certain Offenders againſt that Act ſhall, before they be delivered, make a full Renunciation, *&c.* it is to be known that as well before that Statute, *viz.* in the Reigns of *Ed.* 1. and *Ed.* as after, the Form of Renunciation was to this Effect, "I renounce all "the Words compriſed in the Pope's Bull to me made of the Biſhop "rick of *A.* (or the like) the which be contrary or prejudicial to the "King, our Sovereign Lord, and to his Crown, and of that I put my "ſelf humbly in his Grace, praying to have Reſtitution of the Temporalties of my ſaid Church, *&c.*" Whereby it may appear what the Law was in that Caſe before 25 *E.* 3. And tho' the Laws are very ſevere, eſpecially againſt the Bulls, *&c.* of the Pope and foreign Juriſdiction; and though Queen *Mary* reſtored his Supremacy in ſuch Manner as hereafter; yet would ſhe not repeal the ſaid Statute of Proviſors and *Præmunire*; but provided that they ſhould ſtand in Force. See the Stat. 2 *Ph. & M.* whereby it appeareth how careful the State in that Reign was to preſerve the Prerogative of the Crown, and the ancient Laws of the Realm; and did at that Time ſo cautiouſly reſtore the Supremacy of the Pope *ſecundum quid*, but not *ſimpliciter*, and bounded his Supremacy within ſtreight and legal Limitations, as by the ſaid Act appeareth. 3 *Inſt.* 127.

15. *Stat.* 27 *E.* 3. *cap.* 1. Upon the grie-
s and clamorous Complaint (for that
raſe is there uſed) of the Great Men and
mmons, touching Citations and Proviſions,
is enacted, that the Offenders ſhall for-
t their Lands, Goods and Chattels, and
eir Bodies be impriſoned and ranſom-
at the King's Will. *Dav.* 86. *b.*

Before this Statute there were three great Miſchiefs. 1*ſt*, That the King's Subjects had been drawn out of the Realm to

wer of Things whereof the Cognizance pertained to the King's Courts.
y, Of Things whereof Judgments have been given in the King's Courts.
d 3*dly*, That after Judgments given in the King's Courts of Mat-
s cogniſable and determinable in thoſe Courts, Suits were commenced
other Courts within this Realm to defeat or impeach thoſe Judgments.
d theſe three Miſchiefs had theſe three inſufferable Effects. 1*ſt*, The
ejudice and Diſinheriſon of the King and his Crown. 2*dly*, The Diſ-
heriſon of all his Subjects. And 3*dly*, Undoing of the Common Law
this Realm. All which appears in the Preamble of this Act were
ught to be redreſſed. 3 *Inſt.* 120. By the ſame Statute Procurators,
ttornies, Executors and Maintainers ſhall have the ſame Puniſhment
s the Principal. *Vide* 3 *Inſt. fo.* 125.

16. To nouriſh Love, and Peace and
Concord between Holy Church and the
Realm, and to appeaſe and cauſe to ceaſe
he great Hurt, Perils, and unportable Loſſes
nd Grievances that have, *&c.* and ſhall
happen hereafter, if the Thing hereafter
happen to ſuffer and paſs, becauſe of perſo-
nal Citation and other that be paſt before
his Time, and commonly doth paſs from
Day to Day out of the Court of *Rome*,
by feigned and falſe Suggeſtions and Pro-
poſitions againſt all Manner of Perſons of
the Realm, upon Cauſes whoſe Cogni-
ſance and final Diſcuſſing pertaining to
our Lord the King and his Royal Court,
and alſo of Impetrations and Proviſions
made in the ſaid Court of *Rome* of Bene-
fices and Offices of the Church, pertaining
to

to the Gift, Presentation, Donation
Disposition of our said Lord the King,
other Lay Patrons of his Realm, and
Churches, Chapels and other Benefices
propriated to Cathedral Churches, Abbe
Priories, Chantries, Hospitals and oth
poor Houses, and of other Dignities, O
ces and Benefices occupied in Times pa
and presented by divers and notable Pe
sons of the said Realm. For the whi
Causes, and the Dependants thereof, t
good antient Laws, Customs and Fra
chises of the said Realm have been and
greatly impeached, blemished and confoun
ed, the Crown of our Lord the King abase
and his Person very hardly and falsly de
famed, the Treasure and Riches of h
Realm carried away, the Inhabitants an
Subjects of the Realm impoverished an
troubled, the Benefices of the Church wa
sted and destroyed, Divine Service, Hosp
talities, Alms, Deeds, and other Works o
Charity withdrawn and set apart, th
Great Men, Commons and Subjects of th
Realm in Body and Goods damnified. The
who receive Citations from *Rome* against
any of this Realm for Causes, the Cogni-
zance whereof pertaineth to the King and
his Court, or for Impretration of Benefices
of the King's or other Men's Gifts, shall in-
cur the Penalty ordained for Provisors made
anno 25 *E.* 3. And they who are suspected
of any of the said Offences, that cannot be
attached by their Persons, if within two
Months after Warning they do not ap-
pear before the King's Justices to answer,
shall incur the Penalty of the Statute 27

3. 1. And he who doth commit any of e Offences aforeſaid ſhall be ſet out of e King's Protection, and puniſhed ac-rding to the *Stat.* 27 *E.* 3. 1. And he no doth upon Malice falſly purſue any on this Statute ſhall be puniſhed at the ng's Pleaſure, and make amends to the rty grieved. The King and all the Par-ment Houſe agreed to appeach the Offen-rs, and to reſiſt them. *Stat.* 38 *E.* 3. of roviſors, altered by the *Stat.* 13 *Eliz.* 2. here theſe Offences are made High Trea-n. *See the Statutes.*

By the *Stat.* 28 *E.* 3. *c.* 2. The Defendant ought to appear in Perſon, and therefore he cannot appear by Attorney, without ſpecial Writ out of Chancery. And this Act as well binds Lords of arliament, as all others. *Vide* 3 *Inſt. fo.* 125. *Vide Dav.* 86.

17. During the Nonage of *R.* 2. they began nce again to incroach upon the Crown, by ending Legates, and Bulls and Briefs into *England*, whereof the Nation was ſo ſenſible nd impatient, as at their ſpecial Prayer, hat very *neceſſary* Law of 16 *R.* 2. (being nore ſharp and penal than all the former tatutes againſt Proviſors,) was made; (and et againſt this King as againſt *E.* 2. it was bjected at his Deprivation, that he had al-owed the Pope's Bull to the Inthralling of he Crown, *&c.*) *Dav.* 96. *a.* Whereupon he Statute 16 *R.* 2. came, That if any pur-haſe or purſue, or cauſe to be, *&c.* in the Court of *Rome*, or *elſewhere*, any Tranſla-ions, Proceſſes, and Sentences of Excom-munication,

The Words *vel alibi, or elſewhere*, comprehend the Eccleſiaſtical Courts within theſe Realms, as well as thoſe beyond Seas. So jealous were he Kings and People of the Prerogative Royal, and the Superior Tem-poral or Municipal Laws, as throughout the Books appears.

munication, Bulls, Inſtruments, or any other Things whatſoever which touch the King, againſt him, his Crown and his Regality, or his Realm, *as in the ſaid Statute*; and they which bring within this Realm, or them receive, or make thereof Notifications, or any other Execution whatſoever within the ſaid Realm, or without, that they, their Notaries, Procurators, Maintainers, Abettors, Fautors and Counſellors, ſhall be put out of the King's Protection, and their Lands and Tenements, Goods and Chattels forfeited to our Lord the King; and that they be attached by their Bodies, if they may be found, and brought before the King and his Council, there to anſwer to the Caſes aforeſaid, or that Proceſs be made againſt them by *Præmunire facias*, in Manner as it is ordained in other Statutes of Proviſors; and others which do ſue *in any other Court* in Derogation of the Regality of our Lord the King. *Stat.* 16 R. 2. *c.* 5. *Vide Regiſter Jud. fo* 82. *Vide Nat. Br. fo.* 153. *Co. Pl. fo.* 435. *Raſtal Pl. fo.* 24, 221, 427, 465. This Statute enacts, with a full Conſent of the three Eſtates, that ſuch as ſhould purchaſe in the Court of *Rome, or elſewhere*, any Bulls or Proceſſes, or other Things which might touch the King in his Crown and Dignity Royal, and ſuch as ſhould bring them into the Realm, and ſuch as ſhould receive them, publiſh them or execute them, they, their Notaries, Proctors, Maintainers and Counſellors, ſhould be all out of the King's Protection, their Lands and Goods forfeited to the King, their

heir Bodies attached, if they might be ound, or elſe Proceſs of *Præmunire facias* o be awarded againſt them. *Dav.* 86. *a. vue le Stat.* 16 *R.* 2.) And other former aws were made againſt Proviſors when oth the Prince and People of *England*, for he moſt part, acknowledged the Pope the hirteenth Apoſtle, and only Oracle in Mat-ers of Religion, and did follow his Doctrine n moſt of thoſe Points wherein we now diſ-ent from him. *Dav.* 84, 85. The Crown of *England* hath been ſo free at all Times, hat it hath been in no earthly Subjection, ut immediately ſubject to God in all hings, and to none other. *Stat.* 16 *R.* 2. 5. The Attempts of the Pope to make nd tranſlate Biſhops here are clearly againſt he King's Crown and his Regality. *Stat.* 6 *R.* 2. *c.* 5. The Effect of the Statute 16 . 2. is, if any purſue or cauſe to be pur-ued in the Court of *Rome* or elſewhere, ny Thing which toucheth the King, againſt im, his Crown and Regality, or his Realm, heir Notaries, Procurators, *&c.* Fautors, *&c* hall be out of the King's Protection, *&c.* *Inſt.* 119.

18. In *H.* 4.'s Time it was reſolved, that he Pope's Collector, tho' he had the Pope's ulls, had no Juriſdiction here. 5 *Co. De ure Regis Eccl.* 22. *b.*

19. By the Statute 2 *H.* 4. *cap.* 4. the iſtertians are put in a *Præmunire* for pur-haſing and putting in Execution Bulls of xemption, *from Tithes*, of their Lands urchaſed after the Decree of *Adrian* re-eived here. *Vide Popham* 157.

20. *Tempore H.* 6. The Pope wrote Letters in Derogation of the King and his Regality, and the Churchmen durſt not ſpeak againſt them; but *Humphrey* Duke of *Glouceſter*, for their ſafe Keeping, put them into the Fire. 5 *Co. De Jure Regis Eccl.* 26. *a.*

21. In the weak Time of this King *H.* they made another Attempt to revive their uſurped Juriſdiction by this Policy. The Commons had denied the King a Subſidy when he greatly wanted Money; thereupon the Archbiſhop of *Canterbury* and the other Biſhops offered him a large Supply if he would conſent, that all the Laws againſt Proviſors, and eſpecially that of the 16 *R.* might be repealed; but *Humphrey* Duke of *Glouceſter*, who then lately had caſt the Pope's Bull into the Fire, alſo cauſed this Motion to be rejected; ſo as by a moſt ſpecial Providence thoſe Laws *againſt Proviſors*, and *Church Encroachments*, have ſtood in Force even to this Day. *Dav.* 96. *a. b.*

22. The Courts where any Plea ſhall be depending, *&c.* wherein Baſtardy ſhall be alledged, and Iſſue joined, the Judges of the ſaid Courts, or one of them, before any Writ of Certificate paſs out of the ſame Court to the Ordinary to certify, *&c.* ſhall make a Remembrance under his or their Seal, at the Suit of the Demandant or Tenant, Plaintiff or Defendant in the Plea, in which the Baſtardy is alledged, reciting the Iſſue, and certifying to the Chancellor of the King for the Time being, to the Intent that Proclamation be made in the Chancery by three Months, once in every Month, that all Perſons pretending any Intereſt to

object

bject againſt the Party pretending to be
ulier, that they ſue to the Ordinary, to
hom the Certificate is directed, to make
eir Allegations and Objections againſt the
rty, and the Chancellor is to order ſuch
oclamation to be made, on Requeſt of
e Party, which is to be certified to the
ourt where the Plea is pending; and the
dges where the Plea is ſo pending, *&c.* are
their own Courts once to make Proclama-
n before Proclamation be certified by the
hancellor, and once after; and then the
dges or Judge are, or is, to award the
d Writ of Certificate to the Ordinary; and
this Courſe is not purſued, all done there-
on is void, *&c.* *Stat.* 9 *H.* 6. *c.* 11. *Vide*
ſt. Pl. fo. 29, 105, 161, 280, 577, 609.

23. By *Stat.* 24 *H.* 8. *c.* 12. (that is to ſay)
the King, 24 Biſhops, 29 Abbots and
lors (for ſo many were then Lords of Par-
ment) by all the Lords Temporal and
mmons in Parliament aſſembled, it is de-
red, that where by divers ſundry, old, an-
ue Hiſtories and Chronicles it was ma-
eſtly declared and expreſſed, that this
alm of *England* is an Empire, and ſo has
n accepted in the World, governed by
Supreme Head; and the King having
Dignity and Royal Eſtate of the Impe-
Crown of the ſame, unto whom a Body
itick compact of all Sorts and Degrees of
ple, divided in Terms and by Names of
ritualty and Temporalty be bound and
ht to bear, next to God, a natural and
ble Obedience; he being alſo inſtituted
furniſhed by the Goodneſs and Fur-
rance of Almighty God with plenary

and whole and intire Power, Pre-eminenc
Authority, Prerogative and Juriſdiction,
render and yield Juſtice and final Dete
mination to all Manner of Folk, Reſiants
Subjects within this his Realm, in all Cauſe
Matters, Debates and Contentions happe
ing to incur, inſurge, or begin within t
Limits thereof, without Reſtraint or Pro
cation to any Princes or Potentates of t
World; the Body Spiritual whereof havi
Power, when any Cauſe of the Law Divi
happened to come in Queſtion, or of Spi
tual Learning, that it was declared, inte
preted and ſhewed by that Part of the ſa
Body Politick, called the Spiritual, then b
ing uſually called the *Engliſh* Church, whi
always had been reputed and alſo found of th
Sort, that both for Knowledge, Integri
and Sufficiency of Number it had been alwa
thought and was alſo then ſufficient and me
of it ſelf, without the Intermeddling of a
exterior Perſon or Perſons to declare and d
termine all ſuch Doubts, and to adminiſt
all ſuch Offices and Duties, *quæ ad ſpiritual*
ordinem ſpectant; for the due Adminiſtrati
whereof, and to keep them from Corrupti
and ſiniſter Affection, the King's moſt No
Progenitors and the Anceſtors of the N
bles of this Realm did ſufficiently endo
the ſaid Church with Honours and Poſſe
ſions; and the Laws Temporal for Trial
Property of Lands and Goods, and for t
Conſervation of the People of this Rea
in Unity and Peace, without Rapine
Spoil, was adminiſtered, adjudged and e
cuted by ſundry Judges and Miniſters of t
other Part of the ſaid Body Politick call

Temporal

emporalty; and both their Authorities and riſdictions did conjoin in the due Admi-ſtration of Juſtice, the one to help the her. And whereas the King, his moſt oble Progenitors, and the Nobility and ommons of the ſaid Realm, at divers and ndry Parliaments, as well in the Time of ing *E.* 1. *E.* 3. *R.* 2. *H.* 4. and other oble Kings of this Realm, made ſundry rdinances, Laws, Statutes and Proviſions r the intire and ſure Conſervation of the erogative, Liberties and Pre-eminences of e ſaid Imperial Crown, and of the Juriſ-ction Spiritual and Temporal of the ſame, keep it from the Annoyance as well of e See of *Rome*, as from the Authority of her foreign Potentates attempting the Di-inution or Violation thereof, ſo often as ch Annoyance or Attempt might be known eſpied; and notwithſtanding the ſaid good atutes and Ordinances made in the Preſer-tion of the Authority and Prerogative of e ſaid Imperial Crown as aforeſaid; yet everthelefs ſince the making of the ſaid ood Statutes and Ordinances, divers and ndry Inconveniences and Dangers, not ainly provided for by the ſaid former cts, Statutes and Ordinances, have ariſen nd ſprung by Reaſon of Appeals uſed out this Realm to the See of *Rome* in Cauſes eſtamentary, of Matrimony and Divorce, ights of Tithes, Oblations and Obventions, ot only to the great Inquietation, Vexation, rouble, Coſts and Charges of the King imſelf, and many of his Subjects and Re-ants within his Realm; but alſo to the reat Delay and Let to the true and ſpeedy

Determination of the ſaid Cauſes: For as much as the Parties appealing to the ſaid Court of *Rome*, moſt commonly, did the ſame for the Delay of Juſtice; and for as much as the great Diſtance of Way was ſo far out of the Realm, ſo that the neceſſary Proofs nor the true Knowledge of the Cauſe could neither be ſo well known, or the Witneſſes there ſo well examined as within the Realm; ſo that the Parties aggrieved by ſuch Appeals were moſt Times without Remedy. In Conſideration whereof the King, his Nobles and Commons, conſidering the great Enormities, Damages, long Delays and Hurts, and that as well to his Highneſs, as to his ſaid Noble Subjects, Commons and Reſiants within this Realm in the ſaid Cauſes Teſtamentary, Matrimony, Divorce, Tithes, Oblations and Obventions, did daily enſue, did therefore by his Royal Aſſent, and by the Aſſent of the Lords Spiritual and Temporal, and the Commons in that Parliament aſſembled, and by Authority of the ſame, enact, eſtabliſh and ordain, that all Cauſes Teſtamentary, of Matrimony and Divorces, Rights of Tithes, Oblations and Obventions, the Knowledge whereof by the Goodneſs of Princes of this Realm, and by the Laws and Cuſtoms of the ſame, appertained to the Spiritual Juriſdiction of this Realm then already commenced, moved, depending, being, happening, or hereafter coming in Contention, Debate or Queſtion within this Realm, or within any of the King's Dominions or Marches of the ſame, or elſewhere, whether they concern the King, his Heirs, or Succeſſors, or any other Subjects or Reſiants

nts within this Realm, of what Degree ever they be, ſhould be from thenceforth eard, examined, diſcuſſed, clearly, finally nd definitively adjudged and determined ithin the King's Juriſdiction and Autho-ty, and not elſewhere, in ſuch Courts Spi-tual and Temporal of the ſame, as the atures, Conditions, and Qualities of the aſes and Matters aforeſaid of Contention, r thereafter happening in Contention, ſhould equire, without having any Reſpect to any uſtom, Uſe or Sufferance, in Hindrance, oſs or Prejudice of the ſame, or to any ther Things uſed or ſuffered to the contrary hereof by any other Manner, Perſon or erſons in any Manner of Wiſe; any foreign nhibitions, Appeals, Sentences, Summons, itations, Suſpenſions, Interdictions, Ex-ommunications, Reſtraints, Judgments, or ny other Proceſs or Impediment, of what Natures, Names, Qualities or Conditions oever they be, from the See of *Rome*, or ny other foreign Court or Potentate of the World, or from and out of this Realm, or ny other the King's Dominions, or Marches of the ſame, to the See of *Rome*, or to any other foreign Courts or Potentates, to the Let or Impediment thereof, in any wiſe notwithſtanding, as by the ſaid Act appeareth. 5 *Co. De Jure Regis Eccl. fo.* 28. *a. b.* 29. *a. b.* 30. *a. b.* 31. *a.*

The Pope was permitted to do certain Things within this Realm by Uſurpation, but not of Right, even until the Reign of *H.* 8. *Br. Abr. Preſentment*, 12. This Statute is declaratory of the antient Laws, as appeareth by 9 *E.* 4. *Fitz. N. B.* 44. and many other Caſes and Statutes. 5 *Co. Part* 1. *ſur le Statute ſupra.*

24. It hath been declared by Statute 25 *H.* 8. *cap.* 21. in full Parliament, that the Spiritualty (uſually called the Church of *England*) always hath been reputed and found of that Sort, as both for Knowledge, Integrity, and Sufficiency of Number, hath been always ſufficient and meet of it ſelf, without the Intermedling of any exterior Perſon or Perſons to declare and determine of ſuch Doubts, and to adminiſter all ſuch Offices and Duties as to their Rooms ſpiritually do appertain. For the due Adminiſtration whereof, and to keep them from Corruption, and ſiniſter Affection, the King's moſt noble Progenitors, and the Anceſtors of the Nobles of this Realm have ſufficiently endowed the ſaid Church both with Honour and Poſſeſſions. 4 *Inſt. fo.* 321.

25. By Act of Parliament of 25 *H.* 8. *cap.* 21. It is declared by the King, the Lords Spiritual and Temporal and the Commons in that Parliament aſſembled, that neither the King, his Heirs nor Succeſſors, nor any his Subjects of this Realm, or other his Dominions, ſhould from thenceforth ſue to the Biſhop of *Rome*, called the Pope, or to that See, or to any having or pretending to have any Authority by the ſame, for Licenſes, Diſpenſations, Impoſitions, Faculties, Grants, Eſcripts, Delegacies, or any other Inſtruments, or Writings of any Kind, Name, Nature, or Quality ſoever for any Cauſe or Matter, for which any Licence, *&c.* thentofore had been uſed and accuſtomed to be had and obtained at the See

f *Rome* or by Authority thereof, or of any relate of this Realm, nor for any Manner f other Licenſes, *&c.* that in Cauſes of Neceſſity might have fully been granted, ithout offending holy Scripture, and Laws f GOD, but that from thenceforth every uch Licence, Diſpenſation, *&c.* aforenamed eceſſary for the King, his Heirs and Suceſſors, and his and their People and Subects, upon the due Examination of the Cauſes and Qualities of the Perſons procuing ſuch Diſpenſations, Licenſes, *&c.* hould be granted, had and obtained from Time to Time within this Realm and other he King's Dominions, and not elſewhere, n Manner following, and not otherwiſe (that is to ſay) The Archbiſhop of *Canterbury* or the Time being, and his Succeſſors hould have Power and Authority from Time to Time, at Diſcretion, to give, grant and diſpoſe by an Inſtrument under his and their Seal to the King and his Heirs and Succeſſors, Kings of this Realm, their Subjects, all ſuch Licences for Cauſes not being contrary to Holy Scripture and Laws of GOD, as thentofore had been uſed to be had and obtained by the King or any his Progenitors, or any his or their Subjects at the See of *Rome*, or any Perſon or Perſons by Authority of the ſame, and all other Licenſes in, for, and upon all ſuch Cauſes and Matters as ſhould be convenient and neceſſary to be had for the Honour and Surety of the King, his Heirs and Succeſſors, and the Wealth and Profit of this his Realm; ſo that the ſaid Archbiſhop, or any his Succeſſors,

Note; This Statute was declaratory of the ancient Law. Stat. 25 *H.* 8. took away the Pope's Juriſdiction. *Watſon*, Biſhop of *St. David*'s Caſe in *Salk.* Stat. 25 *H.* 8. *cap.* 19. is a general Prohibition, that no Appeal ſhall be purſued out of the Realm to *Rome*, or elſewhere. 4 *Inſt.* 340. By the Stat. 25 *H.* 8. *c.* 21. It is, That this your Grace's Realm recognizing no Superior under GOD, but only your Grace hath been and is free from Subjection to any Man's Laws, but only to ſuch as have been deviſed, made and ordained within this Realm for the Wealth of the ſame, or to ſuch other as, by Sufferance of your Grace and your Progenitors, the People of this your Realm have taken at their free Liberty by their own Conſent to be uſed amongſt them, and have bound themſelves by long Uſe and Cuſtom to the Obſervance of the ſame; not as to the Obſervance of the Laws of any foreign Prince, Potentate, or Prelate, but as to the Cuſtoms and ancient Laws of this Realm, originally eſtabliſhed as Laws of the ſame, by the ſaid Sufferance, Conſent and Cuſtom, and none otherwiſe. 4 *Inſt.* 342, 343. In the Preamble to the Statute of Faculties the Parliament expreſs'd to be their Judgment, that the Biſhop of *Rome* had deceived and abuſed the Subjects of the Crown of *England*, pretending and perſuading that he had full Power to diſpenſe with all human Laws, Uſes and Cuſtoms of all Realms in all Cauſes Spiritual, which had been uſurped and practiſed by him and his Predeceſſors for many Years, to the great Derogation of the Imperial Crown of *England*: For the Realm of *England* recognizing no Superior under GOD but the King himſelf, hath been and ſtill remaineth free from all Subjection to any Man's Laws, but ſuch as have either been made here for the Wealth of the ſame, or to ſuch other as by Sufferance of the King and his Progenitors and the People of this Realm have taken at their free Liberty and by their own Conſent to be uſed amongſt them, and have bound themſelves by long Uſe and Cuſtom to obſerve, not as the Laws of any foreign Prince, Potentate, or Prelate, but as the cuſtomed and ancient Laws of this Realm, originally eſtabliſhed as Laws of the ſame by the ſaid Sufferance, Conſent and Cuſtom, and not otherwiſe. It ſtandeth therefore with natural Equity and good Reaſon, that all ſuch human Laws made within this Realm, or induced into this Realm by the ſaid Sufferance, Conſent and Cuſtom ſhould be diſpenſed with, abrogated, amplified, or diminiſhed by the King and his Parliament, or by ſuch Perſons as the King and Parliament ſhould authoriſe, *&c.* *Vide* 21 *H.* 7. where it is ſaid, that certain Prieſts were deprived by the Act of Parliament, *Temp. R.* 2. *Dav.* 71. *b.* 72. *a.*

ceſſors, in no Manner grant ſuch Diſpenſations, *&c.* for any Thing repugnant to the Law of GOD, as by the ſaid Statute appeareth. 5 *Co. De jure Regis Eccl.* 31. *a. b.* 32. *a. b.*

26. By

26. By the Stat. 26 *H.* 8. *c.* 1. The King is declared Supreme Head of the Church, and ſo had been recogniſed by the Clergy in Convocations, yet for Confirmation thereof, it was by the ſaid Statute enacted, that the ſaid King, his Heirs and Succeſſors ſhould be taken, accepted and reputed the only Supreme Head in the Earth of the Church of *England*, called *Anglicana Eccleſia*, and ſhould have and enjoy annexed and united to the Imperial Crown of the Realm, as well the Title and Stile thereof, as all Honours, Dignities, Preheminences, Juriſdictions, Privileges, Authorities, Immunities, Profits and Commodities to the ſaid Dignity of Supreme Head belonging and appertaining; and that our ſaid Sovereign Lord, his Heirs and Succeſſors, Kings of this Realm, ſhould have full Power and Authority from Time to Time to viſit, redreſs, reform, order, correct, reſtrain and amend all Errors, Hereſies, Abuſes, Offences, Contempts and Enormities whatſoever they be, which by any ſpiritual Authority or Juriſdiction ought or might lawfully be reformed, repreſſed, redreſſed, corrected, reſtrained or amended, moſt to the Pleaſure of Almighty GOD, the Increaſe of Virtue in Chriſt's Religion, and for the Conſervation of the Peace, Unity and Tranquillity of the Realm; any Uſage, Cuſtoms, foreign Laws, foreign Authority, Preſcription, or any Thing or Things to the contrary hereof notwithſtanding.

27. By the Stat. 26 *H.* 8. and 35. of the ſame King, it is declared and enacted, that the King, his Heirs and Succeſſors ſhould be taken

taken and accepted the only Supreme Head in Earth of the Church in *England*, and ſhould have and enjoy annexed to the Imperial Crown of this Realm, as well the Title and Stile thereof, as all Honours, Dignities, Preheminences, Juriſdictions, *&c.* to the ſaid Dignity of Supreme Head belonging, *&c.* by which Stile, Title and Dignity of Supreme Head of the Church of *England*, King *Hen.* 8. his Heirs and Succeſſors had, and have all Juriſdiction Eccleſiaſtical whatſoever. And though theſe Acts were repealed by the 1 & 2 *Ph. & Mar.* that Act 1 & 2 *Ph. & Mar.* was by the Statute 1 *Eliz.* made abſolutely void, and conſequently theſe Statutes were revived: And ſo by the Act of Repeal 1 *Eliz.* that Queen, her Heirs and Succeſſors were Supreme Head of the Church of *England.* 4 *Inſt.* 325.

28. Statute 5 *E.* 6. provided againſt Selling of Offices, extendeth as well to Eccleſiaſtical Offices, as Temporal which concern the Adminiſtration and Execution of Juſtice. And it was reſolved in the Caſe of Doctor *Trevor*, Chancellor of a Biſhop in *Wales*, that both the Office of Chancellor and Regiſter of a Biſhop are within that Statute; for that they concern the Adminiſtration of Juſtice. 3 *Inſt.* 148.

29. Queen *Mary* repealed all Offences made to be in the Caſe of *Præmunire* ſince the firſt Day of the firſt Year of *Hen.* 8. but ſome of them are revived by the Statute of the firſt of *Eliz. cap.* 1. but in all Queen *Mary*'s Time, the Statutes made concerning the Offences of *Præmunire*, before the Reign of

of *Hen.* 8. were neither repealed nor altered, but allowed in Queen *Mary*'s Time. 3 *Inſt.* 126, 127. *Vide Stat.* 1 & 2 *Ph.* & *Mar. cap.* 8. 1 *Eliz. cap.* 1. 5 *Eliz. cap.* 1. 13 *Eliz. cap.* 1, 2, 8. 27 *Eliz. cap.* 2. 21 *Jac. cap.* 3.

30. By Act of Parliament made 1 *Eliz. cap.* 1. It is declared, that where, in the Reign of *H.* 8. divers good Laws and Statutes were made and eſtabliſhed, as well for the utter Extinguiſhment and putting away of all uſurped and foreign Power and Authorities out of this Realm, and other her Dominions and Countries, as alſo for the reſtoring and uniting to the Imperial Crown of this Realm the antient Juriſdiction, Authorities, Superiorities, and Preheminences to the ſame of Right belonging and appertaining; by Reaſon whereof her Subjects, from the 25th Year of the ſaid King *H.* 8. were continually kept in good Order, and disburthened of divers great and intolerable Charges and Vexations before that Time unlawfully taken and exacted by ſuch foreign Power and Authority as before that was uſurped; and to the Intent that all uſurped and foreign Power and Authority Spiritual and Temporal might for ever be clearly extinguiſhed and never uſed or obeyed within this Realm, or any other her Dominions or Countries; It was enacted, that no foreign Prince, Perſon, Prelate, State, or Potentate Spiritual or Temporal, ſhould at any Time after the laſt Day of that Seſſions of Parliament, uſe, enjoy or exerciſe any Manner of Power, Juriſdiction, Superiority, Authority, Preheminence, or Privilege

Privilege Spiritual or Eccleſiaſtical within this Realm, or within any other the Queen's Dominions, or Countries that then were or ſhould be; but from thenceforth the ſame ſhould be clearly aboliſhed out of this Realm, and all other her Dominions for ever; any Statute, Ordinance, Cuſtom, Conſtitution, or any other Matter or Cauſe whatſoever to the contrary in any wiſe notwithſtanding. And it was then alſo eſtabliſhed and enacted by the Authority of that Parliament, that ſuch Juriſdiction, Privileges, Superiorities, and Preheminences Spiritual and Eccleſiaſtical, as by any Spiritual or Eccleſiaſtical Power or Authority had then before been, or might be, lawfully exerciſed or uſed for the Viſitation of the Eccleſiaſtical State, and Perſons, and for Reformation, Order and Correction of the ſame, and of all Manner of Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities, ſhould for ever, by Authority of that Parliament, be united and annexed to the Imperial Crown of this Realm, and that the Queen, her Heirs and Succeſſors, Kings and Queens of this Realm, ſhould have full Power and Authority by Virtue of that Act, by Letters Patent under the Great Seal of *England*, to aſſign, name and authorize, when and as often as the Queen and her Heirs or Succeſſors ſhould think meet and convenient, and for ſuch and ſo long Time as ſhould pleaſe the Queen, her Heirs or Succeſſors, ſuch Perſon or Perſons being natural-born Subjects to the Queen, her Heirs or Succeſſors, as the ſaid Queen, her Heirs or Succeſſors ſhould think meet to exerciſe, uſe, occupy,

nd execute under the ſaid Queen, her Heirs and Succeſſors, all manner of Juriſdiction, Privilege and Preheminence in any wiſe touching or concerning any Spiritual or Eccleſiaſtical Juriſdiction within theſe Realms of *England* and *Ireland*, or any other her Dominions or Countries, and to viſit, reform, redreſs, order, correct and amend all ſuch Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities whatſoever, which by any Manner of Spiritual or Eccleſiaſtical Juriſdiction or Authority could or might lawfully be reformed, ordered, redreſſed, corrected, reſtrained, or amended to the Pleaſure of Almighty GOD, the Increaſe of Virtue, and the Conſervation of the Peace, and the Unity of this Realm; and that ſuch Perſon or Perſons, ſo to be named, aſſigned, authoriſed and appointed by the ſaid Queen, her Heirs and Succeſſors, after the ſaid Letters Patent to him or them made and delivered, as is aforeſaid, ſhould have full Power and Authority, by Virtue of that Act and of the ſaid Letters Patent, under the ſaid Queen, her Heirs or Succeſſors, to exerciſe, uſe and execute all the Premiſſes, according to the Tenor and Effect of the ſaid Letters Patent; any Matter or Cauſe to the contrary in any wiſe notwithſtanding, as by the ſaid Act alſo appeareth. 5 *Co. De Jure Regis Eccl.* 33. *a. b.* 34. *a. b.*

31. By the Statute 1 *Eliz. cap.* 1. (which reſtoreth the ancient Juriſdiction Eccleſiaſtical to the Crown) the Act 1 & 2 *Ph. & Mar. cap.* 8. is repealed; but there is a ſpecial *Proviſo* in the Act 1 *Eliz.* that it ſhould

not

not extend to repeal any Clauſe, Matter, or Sentence contained or ſpecified in the ſaid Act 1 & 2 *Ph. & Mar.* which doth concern Matter of *Præmunire*, but that ſo much which concerneth any Matter or Cauſe of *Præmunire* ſhould ſtand in Force and Effect; and that Clauſe of the Statute 1 & 2 *Ph. & Mar.* is this, That whoſoever ſhall by any Proceſs obtained out of any Eccleſiaſtical Court within the Realm, or without, by Pretence of any Spiritual Juriſdiction, or otherwiſe contrary to the Laws of the Realm, inquiet or moleſt any Perſon, *&c.* for any Manors, *&c.* Parcel of the Poſſeſſions of any religious Houſe, *&c.* ſhall incur the Danger of the Act of *Præmunire* in *Anno* 16 R. 2. 3 *Inſt.* 122. See alſo the Statute 25 *Hen.* 8. *cap.* 20. whereto this Act hath alſo Reference; and is revived by the 1 *Eliz.* 3 *Inſt.* 122.

The Act 1 *Eliz.* aboliſheth all foreign Juriſdiction, and reſtoreth to the Crown the ancient Juriſdiction, *&c.* 4 *Inſt.* 325. The Act of the 1 *Eliz.* enacteth, That ſuch Juriſdiction, *&c.* Spiritual or Eccleſiaſtical, as by any Spiritual or Eccleſiaſtical Power or Authority had theretofore been, or lawfully might be, exerciſed or uſed for the Viſitation of the Eccleſiaſtical State and Perſons, and for Reformation, Order, and Correction of the ſame, and of all Manner of Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities, ſhall for ever, by Authority of this Parliament, be united and annexed to the Imperial Crown of this Realm. *Vide* 4 *Inſt.* 325.

Stat. 1 *Eliz.* provideth againſt them that ſhould, by

32. By the *Stat.* 1 *Eliz.* no Juriſdiction is reſtored and united to the Crown; but ſuch Printing, Writing or Words, maintain or defend the Juriſdiction Spiritual of any foreign Prince, Prelate, *&c.* within this Realm, that every ſuch Perſon, being lawfully convicted by the Courſe of the Common Law, ſhall for the firſt Offence forfeit and loſe all his and their Goods and Chattels, and if ſuch Perſon's Goods and Chattels ſhall not be worth twenty Pounds, then he ſhall be impriſoned for one whole Year, *&c.* 4 *Inſt.* 331. To maintain the Pope's Supremacy is High Treaſon in the ſecond Degree. 4 *Inſt.* 331.

ch as before that Act had been, or law-
lly might be exerciſed or uſed for the Re-
rmation, &c. Correction, &c. 4 *Inſt.*
6.

33. From the 1 *Eliz.* until the 11th Year
her Reign, no Perſon of what Perſwaſion
Chriſtian Religion ſoever at any Time re-
ſed to come to the Publick Divine Service,
lebrated in the Church of *England*, being
idently grounded upon the Sacred and in-
llible Word of Almighty God, and eſta-
ſhed by Publick Authority within this
ealm; but after the Bull of that Biſhop of
ome, *impiouſly called Pius Quintus*, was pub-
ſhed againſt her Majeſty in the eleventh
ear of her Reign, (containing among o-
er Things too long to be repeated) in
eſe Words, *Pius*, Biſhop, Servant of God's
rvants, &c. She (Queen *Elizabeth*) hath
ean put away the Sacrifice of the Maſs,
rayers, Faſtings, Choice or Difference of
leats, and ſingle Life. She poſſeſſing the
ingdom, and by uſurping the Place of
e Supreme Head of the Church of *Eng-*
nd, the chief Authority and Juriſdiction
f the ſame, hath again brought the ſaid
ealm into miſerable Deſtruction; unto her,
veral ſuch as are the worſt of the People,
ſort, and are by her received into ſafe
rotection, &c. *We make it known*, that the
id *Elizabeth*, and as many as ſtand on her
ide in the Matter above named, have run
nto the Danger of our Curſe. *We make*
alſo known, that we have deprived her
om that Right ſhe pretended to have in
e Kingdom aforeſaid, and alſo from all and
very her Authority, Dignity, and Privilege.

We charge and forbid all and every the Nobles and Subjects, and People and others aforesaid, that they be not so hardy as to obey her or her Admonitions, Commandments or Laws, upon Pain of the like Accurse upon them. *We pronounce*, that all and whoever by any Occasion have taken their Oath unto her, are for ever discharged of such their Oath, and also from all Fealty and Service, which was due to her by Reason of her Government, *&c.* as by the said Bull more at large appeareth. After this Bull, all they who depended on the Pope obeyed the Bull, disobeyed their gracious and natural Sovereign, and upon this Occasion refused to come to Church. The Publishing of this Bull by a Subject against his Sovereign, as appeareth by that which hath been oftentimes said, was Treason in the highest Degree by the antient Common Law of *England*; for if it were Treason to publish a Bull of Excommunication within this Realm against a Subject thereof, as was adjudged in the Reign of *E.* 1. *a fortiori* it is Treason in the highest Degree to publish such a Bull against the Sovereign and Monarch herself. After this Bull, many Bulls of Absolution and Reconciliation to the Church of *Rome* were published and dispersed amongst her Majesty's Subjects, to withdraw them from their natural Loyalty and Allegiance to their Sovereign, whereupon no small Inconvenience followed; and therefore at a Parliament holden in the thirteenth Year of her Reign it was declared by the whole Body of the Realm, That divers seditious and very ill disposed

diſpoſed People, minding very ſeditiouſly and unnaturally, not only to bring this Realm and the Imperial Crown thereof (being in Truth of themſelves moſt free) again into the Thraldom and Subjection of the foreign uſurped and unlawful Juriſdiction, Pre-eminence and Authority, claimed by the See of *Rome*, but alſo to eſtrange and alienate the Minds and Hearts of ſundry the Queen's Subjects from their dutiful Obedience, and to raiſe and ſtir Sedition and Rebellion within this Realm, did then lately procure and obtain unto themſelves, from the ſaid Biſhop of *Rome* and his ſaid See, divers Bulls and Writings, the Effect whereof had been, and then was, to abſolve and reconcile all thoſe that would be contented to forſake their due Obedience to the Queen, and to yield and ſubject themſelves to the ſaid feigned, unlawful, and uſurped Authority; and by Colour of the ſaid Bulls and Writings, the ſaid Perſons were ſecretly and moſt ſeditiouſly in ſuch Parts of the Realm where the People for Want of good Inſtruction were moſt weak, ſimple and ignorant, and thereby fartheſt from the good Underſtanding of their Duty towards God and the Queen, did by their lewd and ſubtle Practices and Perſwaſions ſo far forth work, that ſundry ſimple and ignorant Perſons had been contented to be reconciled to the ſaid uſurped Authority of the See of *Rome*, and to take Abſolution at the Hands of the ſaid naughty and ſubtle Practiſers, whereby did grow great Diſobedience and Boldneſs in many; (1.) Not only to withdraw and abſent themſelves from all Divine Service then

most godly set forth and used within this Realm; (2.) but also have thought themselves discharged of and from all Obedience, Duty, and Allegiance to her Majesty; (3.) whereby most wicked and unnatural Rebellions did ensue; (4.) and to the further Danger of this Realm was thereafter very likely to be renewed, if the ungodly and wicked Attempts in that Behalf were not by Severity of Laws in Time restrained and bridled; for Remedy and Redress whereof, and to prevent the great Mischiefs and Inconveniences that thereby might ensue, it was enacted by Authority of Parliament, That if any Person or Persons, after the first of *July* then next, should use or put in Ure in any Place within this Realm, or in any the Queen's Dominions, any such Bull, Writing or Instrument, written or printed, of Absolution or Reconciliation, at any Time theretofore obtained and gotten, or at any Time thereafter to be obtained or gotten, from the said Bishop of *Rome* or any his Successors, or from any other Person or Persons authorised or claiming Authority by or from the said Bishop of *Rome*, his Predecessors or Successors, or See of *Rome*; or if any Person or Persons after the first Day of *July* should take upon him or them, by Colour of any such Bull, Writing, Instrument or Authority, to absolve or reconcile any Person or Persons, or to grant or promise to any Person or Persons within this Realm, or any other the Queen's Dominions, any such Absolution or Reconciliation, by any Speech, Teaching, Preaching, Writing, or any other open Deed; or if

any other Perſon or Perſons within this Realm, or any the Queen's Dominions, after the ſaid firſt Day of *July*, ſhould wilingly receive and take any ſuch Abſolution or Reconciliation, or elſe if any Perſon or Perſons had obtained or gotten ſince the laſt Day of Parliament, holden in the firſt Year of her Reign, or after the ſaid firſt Day of *July*, ſhould obtain or get from the ſaid Biſhop of *Rome*, or any his Succeſſors or See of *Rome*, any Manner of Bull, Writing or Inſtrument written or printed, containing any Thing, Matter, or Cauſe whatſoever, or ſhould publiſh, or by any Ways or Means put in Ure any ſuch Bulls, Writings or Inſtruments, that then all and every ſuch Act or Acts, Offence and Offences ſhould be deemed and adjudged, by Authority of the ſaid Act, to be High Treaſon; and the Offender and Offenders therein, their Procurators, Abettors and Counſellors to the Fact, and committing of the ſaid Offence or Offences, ſhould be deemed and adjudged High Traitors *to the Queen and the Realms*, and being thereof lawfully indicted and attainted, according to the Courſe of the Laws of this Realm, ſhould ſuffer Pains of Death, and alſo loſe and forfeit all their Lands, Tenements, Hereditaments, Goods and Chattels, as in Caſes of High Treaſon, by the Laws of this Realm, ought to be loſt and forfeited, as by the ſaid Act appeareth. 5 *Co.* 34. *b.* 35. *a. b.* 36. *a. b.* 37. *b.*

34 Notwithſtanding by Means and Reaſon of Pope *Pius Quintus*'s Bull, many of the Queen's Subjects departed from their Allegiance; yet no Law was either made or

attempted againſt Recuſancy for a long Time; yet after, on theſe mad Bulls being declared by Act of Parliament to be ſo dangerous, then in their Steads Jeſuits and *Romiſh* Prieſts were ſent over, who in ſecret Corners whiſpered and infuſed into the ignorant People, that the Pope had Power to excommunicate and depoſe Kings and Princes, and that he, in Virtue of ſuch his Authority, had excommunicated the Queen, (*Elizabeth*) deprived her of her Kingdoms, and diſcharged all her Subjects of their Oath, Duties and Allegiance; and therefore they ought not to obey her, or any her Commands or Laws, under Pain of the Pope's Curſe. This was High Treaſon at the Common Law; and thereupon *Campion* and *Sherwin*, and other *Romiſh* Prieſts being apprehended, and confeſſing that they came into *England* to make a Party for the Catholick Cauſe (as they called it) when need ſhould require, were in the twenty-firſt Year of the ſame Queen's Reign, by the antient Common Law indicted, arraigned, tried, judged and executed for High Treaſon againſt their natural Allegiance which they owed their Sovereign; but all this Time there was no Act of Parliament, either againſt Recuſants, or Jeſuits, or Prieſts; her Majeſty ſtill deſiring and expecting their Converſion, and that by Clemency and Mercy they might be reclaimed to their former Obedience and Conformity. Before the ſaid Bull, and after, Prieſts and Jeſuits were puniſhed by Sentence of Law, according to their Demerits; then great Numbers of ſlanderous and ſeditious Books (*Libri falſidici*), againſt her

er Majeſty were diſperſed and ſcattered ithin this Realm, tending to the Inciting nd Stirring up of the Subjects to Inſurrec- on and Rebellion. Her Majeſty in open arliament, having had, with the Lords Spi- tual, Temporal, and Commons, mature onſideration of ſo weighty and important auſes, in the twenty-third Year of her eign, made two ſeveral Laws, one againſt he Makers and Publiſhers of ſeditious ooks, ordaining the Offence to be Felony; nother againſt Recuſants, inflicting the Pe- alty of 20 *l.* a Month for their Recuſancy; nd yet upon their Submiſſion according to hat Act, they were to be free and abſo- utely diſcharged; a mild and merciful Law, conſidering their former Conformity, and he Cauſe of their Revolt;) but after theſe eſuits and *Romiſh* Prieſts, coming daily in- o, and ſwarming in the Realm, inſtilling till their Poiſon into the Subjects Hearts, nd by all Means endeavouring to with- draw them from their Duty and Allegiance o her Majeſty, and to reconcile them to he Church of *Rome*, in the 27th Year of her Yeign, ſhe, by Authority of Parliament, made it Treaſon for any Jeſuit or *Romiſh* Prieſt, being her natural-born Subject, and made a *Romiſh* Prieſt or Jeſuit ſince the Be- gining of her Reign, to come into any of her Dominions; intending thereby to keep them out of the ſame, that they might not infect other Subjects with ſuch treaſonable and damnable Perſwaſions and Practices; which, without Controverſy, were High Treaſon by the antient Common Laws of *England*; the ſame being *Crimen Læſæ*

Majeſtatis by the antient Laws of this Realm. By this and all the Records of Indictments it appears, that theſe Jeſuits and Prieſts are not condemned for their Prieſthood and Profeſſion, but for their treaſonable and damnable Perſwaſions and Practices againſt the Crowns and Dignities of Monarchs, who were not Tenants of their Kingdoms, (as the Papiſts would fondly have it) at the Will and Pleaſure of the Pope or any other foreign Potentate whatſoever. *Vide* 5 Co. De *Jure Regis Eccl.* 37. *b.* 38. *a. b.* 39. *a. b.*

For what Petitions, *&c.* have been made againſt Aliens or

or Strangers having Eccleſiaſtical Offices, Promotions and Benefices here, *&c.* ſee *Parliament Rolls*, 50 *E.* 3. N° 96, 97, 120. 13 *E.* 3. N° 23. 17 *E.* 3. N° 59, 60. 18 *E.* 3. N° 38. 2 *R.* 2. N° 6. *H.* 4. N° 48. 4 *H.* 6. N° 29, *&c.* See alſo 35 *E.* 1. *Statute de Carliſle* 3 *R.* 2. *c.* 3. 7 *R.* 2. *c.* 12. *Rot. Parl.* 13 *R.* 2. not in Print. 1 *H.* 5. *c.* 7. 4 & 5 *Ph & Mar. c.* 6. 3 *Inſt.* 126.

C.

The Regular Clergy.

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~~I. Where to be.~~

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1. *Wherefore and by whom founded.* —
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I. *General to them.*

1. AN Abbot hath the Administration of Things touching his Rule, and he hath also Jurisdiction over his Monks. *Palm.* 461.

2. None are to carry away the Goods of their Religious Houses to their Heads, &c. beyond Seas; neither to pay any Thing thereout; neither to attend any Visitation out of the Realm. *Statute de Asportatis Religiosorum*, 35 *E.* 1. *c.* 2. And by the same Statute it is enacted, That no such Masters, Priors, Abbots, or other Governors of such Religious Houses, do not assess, &c. on Pain of Forfeiture of all they have, *c.* 3. But they still may visit in the Kingdom, *c.* 4. *Fitz. Abr.* Tit. *Abbe*, 14. 38 *H.* 6. *fo.* 27.

3. For Monasteries and Chauntries, see *Table to Moor*, &c.

4. Monks are not of Evangelical Priesthood, but mere Laymen, as *Beda* saith of them, *merè Laici.* Poph. 157.

5. By the Laws of the Realm, the whole Disposition of Lands and Goods of an Abbey

bey is the Abbot's whilſt he remains Abbot, and is not in the Convent at all; for they are but dead Perſons in Law; and therefore the Abbot ſhall ſue and be ſued only without the Convent, do Homage, Fealty, attorn, make Leaſes and preſent to Advowſons only in his own Name, and this Authority cannot be taken from him but by the Law of the Realm. *Dr. & Stud. Lib.* 2. *c.* 26.

6. If an Abbot buy a Thing which comes to the Uſe of the Houſe, and dieth, his Succeſſor ſhall be charged. *Dr. & Stud. Lib.* 1. *cap.* 9. *fol.* 19. *a.*

II. *Who are ſuch, and when one may be ſaid to be profeſſed.*

1. THEY are ſuch as lead a Monaſtick Life under certain Rules, and have vowed Obedience, perpetual Chaſtity, and wilful Poverty, and of this Sort are Abbots, Priors, Monks, Friars, *&c.* *Blount's Law Dict.* tit. *Eccl. Perſons.*

2. One is ſaid entered into Religion, or profeſſed, when he is regular and profeſſed under certain Rules, as to become one of the four Orders of Friars, or Monks, or Nuns. *Co. Lit.* 36. *a.*

3. A married Man cannot enter into Religion, without the Conſent of the Wife; nor the Wife, during the Life of the Huſband, may not be profeſſed; but ſome, ſaith Lord *Coke*, hold a Diverſity, that *ante carnalem copulam* the Husband or Wife may enter into Religion, without any Conſent,

ent, but *poſt carnalem copulam* neither of them can without the Conſent of the other. *Co. Lit.* 132. *b.*

4. At fourteen Years of Age, it ſeemeth, one may enter into Religion. *Lit. Sect.* 203. *Co. Lit.* 137. *a.* *Stat.* 4 *H.* 4. *c.* 7.

5. One enters into Religion, at his firſt coming and living under Obedience, but he is not profeſſed until a Year paſt, or ſome Time of Probation; and he is ſaid to be profeſſed when he hath taken the Habit of Religion and vowed three Things, namely Obedience, wilful Poverty, and perpetual Chaſtity. *Co. Litt.* 132. *a.* The Abbot of *St. Alban's* Caſe, and ſome others in the Books, are notable Inſtances how well theſe Vows were kept by theſe Regular Clergy.

III. *The ſeveral Sorts.*

1. THere were four Orders of Friars, *viz. Minors*, *Auguſtines*, *Preachers*, and *Carmelites*, and the *Franciſcans*, *Capuchines*, and *Obſervantes* or *Obſervants*, were included under the Title of *Minors*, and they were called *Obſervants*; becauſe not conventual, or joined together in Brotherhood, but lived ſeparately, and bound themſelves to obſerve more ſtrictly the Rites of their Order, *Cum quis ſemel ſe Religioni contulerit, renunciat omnibus quæ ſeculi ſunt, Habita, diſtinctiones, utrum habitum probationis ſuſceperit, vel habitum profeſſionis.* Co. Lit. 132. Bract. fo. 421.

IV. *The*

IV. *The Continuance or Duration and Duty of ſuch Perſons as are profeſſed.*

1. HE who is profeſſed a Monk ſhall be a Monk for Term of Life, unleſs deraigned in the Law of Holy Church; he is bound to keep his Cloiſter. *Lit. Sect.* 202.

V. *Profeſſion is a Civil Death.*

1. WHEN a Man entereth into Religion, and is profeſſed, he is dead in Law, and his Son, or next Couſin, ſhall immediately inherit to him, as though he were dead indeed; he may then make his Will or Teſtament, and appoint Executors, and they may have Actions for what is due to him before his Profeſſion, as other Executors may; and if he make no Teſtament, then Adminiſtration is to be committed, as in other Caſes where one dies Inteſtate. *Lit. Sect.* 200.

2. After this Civil Death the Heir may have a *Mortdanceſtor*. *Co. Lit.* 132. *a. b. Fitz. Nat. Brev.* 196.

VI. *Trials*

VI. *Trials concerning.*

1. *When profeſſed.*

1. THE Time when he was profeſſed, ſhall be tried *per Patriam*, tho' the Profeſſion it ſelf may be tried by the Ordinary. *Bro. Abr. Trial* 94.

2. *Per Fencot* and *Thorpe*, Whether *W.* who is a Stranger to the Writ, was profeſſed at the Time of the Writ purchaſed, ſhall be tried *per Pais.* 1 *Ed.* 3. 37. *Et eadem Lex* of Baſtardy, in a Stranger to the Action. *Eadem Lex* in Baſtardy, or Profeſſion alledged of a Perſon dead. 49 *E.* 3. *Bro. Abr. Trial* 9.

2. *Whether perpetual or moveable.*

1. If Iſſue be, whether a Prior be perpetual or moveable, at the Pleaſure of the Abbot; *moveable ou nemy* ſhall be tried by the Biſhop's Certificate; but Iſſue prior or not, ſhall be tried *per Pais. Bro. Abr. Trial* 19, 89. *Moyne* 4.

VII. *What Remedies for them.*

1. WHEN a Man is entered and profeſſed in Religion, if he bring an Action, the Defendant or Tenant may ſhew it, and ask Judgment if he ſhall Anſwer; and the Reaſon is for that ſuch a Man is dead

dead in Law, and his Son and next Heir ſhall incontinently inherit to him as though he were actually dead, and when he entereth into Religion he may make his Teſtament, and his Executors, and they may have Actions as other Executors, and Adminiſtration may be committed of his Goods as though actually dead. *Lit. Sect.* 200.

2. If a Monk be made a Biſhop, or Parſon, or Vicar, he ſhall have an Action concerning his Biſhoprick, Parſonage or Vicarage, *& ſic de ſimilibus*; ſo the Heads or Sovereigns of theſe Societies may purchaſe, plead, or be impleaded, for Matters concerning their Houſes, *&c. Co. Lit.* 132. *b.*

3. It is provided, if any Wrong be done to Abbots, or other Prelates of the Church, and they have ſued their Right for ſuch Wrongs, and are prevented by Death, before Judgment, their Succeſſors may have Actions, to demand the Goods of their Churches out of the Hands of ſuch Treſpaſſers; and ſo though the Predeceſſors did not purſue their Rights during their Lives. And if any intrude into the Lands, or Tenements, of ſuch Religious Perſons in the Time of Vacation, of which Lands their Predeceſſors died ſeiſed, as in the Right of their Church, their Succeſſors ſhall have a Writ to recover their Seiſin and Damages. *Stat.* 52 *Hen.* 3. *cap.* 28. *Regiſt. fol.* 72, 125. *Fitzh. Nat. Brev.* 112, (G). (H). *Vet. Nat. Brev.* 136. *Raſt. Pl.* 381. *Fitz. Abr. Treſpaſs*, alſo *Deviſe.*

4. When Perſons profeſſed may have Actions *in auter droit.* Co. Lit. 132. b.

5. If an Abbot be diſturbed, he muſt bring his Action in his own Name. *Doct. & Stud. Lib.* 2. *cap.* 26. *fo.* 111. *b.*

6. If an Abbot or Prior alien the Lands of his Houſe and die, though his Succeſſor has Right to the Lands, yet he may not enter, but muſt have Recourſe to his Action. *Doct. & Stud. Lib.* 1. *cap.* 8. *fo.* 17. *b.*

VIII. *Religious Houſes.*

1. *Wherefore, and by whom founded.*

1. MOnaſteries, Priories, Abbies, and other Religious Houſes, were founded to the Honour and Glory of GOD, and the Advancement of Holy Church, by the King, and his Progenitors, and the Nobility, and their Anceſtors. And very great Portions of Lands and Tenements, were given by them to ſuch Monaſteries, Priories, *&c. Stat. De Aſportatis Religioſorum, Anno* 35 *E.* 1. *cap.* 1.

2. *How diſſolved.*

1. Diſſolution of a Priory by the Pope not good. *Palm.* 227.

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D.

The Secular Clergy.

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1. *General.*

D.

The Secular Clergy.

A. *Who are ſuch, and general to them.*

1. THE Secular Clergy are ſuch whoſe ordinary Converſation is in the World, and undertake the Cure of Souls, but live not under the Rules of any Religious Order; ſuch are Biſhops, (whether Provincial, or Dioceſan) Pariſh-Prieſts, &c. *Blount's Law Dict. ſub* Tit. *Eccleſiaſtical Perſons.*

2. The Secular Clergy are Prebendaries, Parſons, Vicars, &c. *Co. Lit.* 136. *a.*

B. *Particular to their Orders and Degrees.*

I. *Biſhops and Biſhopricks,* &c.

1. *Biſhoprick.*

1. *Of what they conſiſt.*

1. IN the 10 *E.* 3. a Biſhoprick might conſiſt of Spiritualties, and ſuch a Biſhop might confer Orders; and divers great Abbots had ſuch Biſhopricks *propter dignitatem.* Fitz. N. B. 12. Palm. 474.

2. *Were*

2. *Were of the King's Foundation.*

1. There is no Biſhoprick but is of the King's Foundation. 2 *Bulſt.* 279.

2. All the Biſhopricks in *England* are of the King's Foundation, and he is Patron of them all; and at firſt, they were Donative, as appears by the Books, and by Acts of Parliament, as well as by Hiſtory, and that *Per traditionem annuli & paſtoralis baculi, i. e.* the Croſier. *Co. Lit.* 134. *a.* 3 *Co.* 75. *b. Vide Co. Lit.* 94. *a.*

3. Antiently Biſhopricks were of the King's Donation; tho' ſince they have been elective by Deans and Chapters, *Hob.* 147. as is elſewhere ſhewn more fully.

4. Biſhops are now canonically elected by the King's Licence, and being ſo elected, the King gives his Royal Aſſent thereto, and by Reſtitution of the Temporalties, fully inveſts them. *Dav.* 92. *b. So that they are not compleat till Reſtitution of the Temporalties, which is the Act of the Crown, ſo that it may be properly ſaid the King makes them; as the* Conge d'Eſlire *is with his Conſent and by his Command; and his Aſſent,* &c. *are abſolutely neceſſary to the making every Biſhop.*

3. *When, and how became Elective.*

1. Biſhopricks in *England* antiently were Donative by the King, and that with good Reaſon; for that the King was Patron; he endowed them, and then the Ceremony of Inveſtiture was *per annulum & baculum*; the one as a Symbol of the Spiritual Marriage with

the Church, the other of the Paſtoral Care and Charge over *Chriſt*'s Flock; but after many Scuffles between our Kings and the Biſhop of *Rome*, it was at laſt ſettled in King *John*'s Time, that they ſhould be elective, but yet that ſuch Election ſhould be founded on the King's *Conge d'Eſlire*. *Watſon* Biſhop of *St. David*'s Caſe in *Salk.* where ſee the Cauſe of the Deprivation of that Biſhop.

2. King *John* was the firſt King, who by his Charter dated the 15th of *January* anno 16th of his Reign, gave Power to Cathedral and Conventual Churches here in *England* to make Canonical Election of their Biſhops, *petita prius* of him, his Heirs and Succeſſors, *Licentia eligendi*, &c. which Charter is found in *Matt. Paris's Hiſt. Maj. fo.* 254. *Dav.* 46. *a. b.* Vide *The Courſe of the Pope's Uſurpation.*

3. By *Stat.* 1 *E.* 6. *c.* 1. All Biſhopricks were made Donative; but 18 *Eliz. c.* 4. hath reſtrained the Statute 25 *H.* 8. and thereby hath made them Elective again in *England*; but in *Ireland* they are Donative by Letters Patent at this Day. *Watſon* Biſhop of *St. David*'s Caſe in *Salk.*

2. *Biſhops or Prelates.*

1. *What, and general to them.*

1. PRelate, or *Prælatus*, we commonly take for an Archbiſhop or Biſhop; but the Learned *Spelman* ſaith, *Prælati Eccleſiæ vocant' nedum ſuperiores, ut Epiſcopi, ſed etiam inferiores,*

ſeriores, ut Archidiaconi, Præsbeteri, Plebani & Rectores Eccleſiarum; ſic enim in Bulla rivileg. apud Mat. Paris tempore H. 3. *anno* 246. *Innocentius, &c. Univerſis tam Cathedrarum quam aliorum Prælatis, necnon Patron. Eccleſiarum, Clericis & Laicis per Regem Angliæ conſtitutis ſalutem, &c.* Page 476.

To Archbiſhops belong their Courts of Audience, Prerogative, and Court of Arches, *&c.* To Biſhops their ſeveral Conſiſtory Courts, and Chanceries, their Chancellors, *&c. Hale's Annal.* 32.

2. *How made,* &c.

1. *The Manner, and what neceſſary thereunto.*

1. The Manner of making Biſhops as well in Caſes of Tranſlation, as new Creation, is this, When a Biſhop dies, the Dean and Chapter certify the King in Chancery, and pray his Licence to elect; whereupon the King gives his *Conge d'Eſlire*, whereupon they elect, and then certify the King, the Archbiſhop and the Party; and then the King, by his Letters Patent, gives his Royal Aſſent, and commands the Archbiſhop to confirm and conſecrate him; whereupon the Archbiſhop examines the Election and Party, and then confirms the Election and Conſecration himſelf. This is the Manner of Proceeding in Creations, and it holds alſo in Caſes of Tranſlations, ſave that he is not conſecrated; for Conſecration like Ordination *Character eſt indelibilis*, and ſuffices for ever. See 1 *Jo.* 100. *Watſon* Biſhop of *St. David's* Caſe in *Salk.*

2. When a Biſhop is tranſlated, the old See is not void by the Election till confirmed, for though he be elected, the King may not conſent; nor the Archbiſhop confirm; and it is not reaſonable he ſhould loſe his old before he gains the new Preferment. 1 *Jo.* 162. And in the Caſe of Creation, not till Conſecration. *Per Dodderidge, Withrington*, 69. *Watſon* Biſhop of *St. David's* Caſe in *Salk.*

3. As their are four Things required to compleat a Parſon, *ſcil.* Preſentation, Admiſſion, Inſtitution and Induction; ſo there are analogically requiſite, in the making of a Biſhop, Election which repreſents Preſentation, Confirmation which reſembles Inſtitution and Inſtallation, or Inthronization, as in the Caſe of an Archbiſhop, which reſembles Induction. *With.* 69. *b.* *Vide Salk.* Biſhop of *St. David's* Caſe.

4. Heretofore when a Biſhop was to be tranſlated, there was no Election, for the Rule of the Common Law was, *Electus non poteſt eligi*, and becauſe it was pretended he was married to the firſt Church, which Marriage could not be diſſolved but by the Pope; thereupon Petition was made to the Pope, and on his Conſent the Party was tranſlated, this was ſaid to be Poſtulation. *With.* 48. *b.* *Sed per Cur'*, This was an Uſurpation againſt Law, and reſtrained by 16 *R.* 2. and 9 *H.* 4. *c.* 8. and Tranſlations are ever by Election, and not by Poſtulation. 1 *Jo.* 160. The Biſhop of *St. David's* Caſe *ſupra.*

5. *Dodderidge:* To the making a Biſhop three Things are neceſſary. 1. Learning. 2. Diſcr-

2. Diſcipline. 3. Support, &c. And he ſaid, that by the Conſecration he had Power of Ordination, and by Confirmation he had the Power of Juriſdiction. *Palm.* 473.

6. Three principal Acts are required to the making of Biſhops. 1. Election; 2. Confirmation, and 3. Conſecration. The taking the Biſhoprick is the Marriage, the Election, is the Solicitation, the Confirmation is the Contract, and Conſecration is the Conſummation of it. *Dodderidge:* There are four Acts in it to be conſidered; as in the making a Parſon there is, 1. Preſentation, to which the Election of the Biſhop anſwereth. 2. Admiſſion of the Parſon before the Ordinary on Examination, which hath Relation to Confirmation of a Biſhop. 3. The Inſtitution, which is as Conſecration. 4. Induction, which is as Reſtitution of the Temporalties; and the Spiritual Marriage between the Church and the Biſhop *Initiatur per Electionem, contrahitur per Confirmationem, & conſummatur per Conſecrationem*; and the Reſtitution of the Temporalties is the bringing the Husband and Wife together, &c. *Palm.* 472.

2. *Their Nomination, Election, and Confirmation.*

1. Every Biſhop by his Election and Confirmation, even before Conſecration, hath Eccleſiaſtical Juriſdiction. *Hale's Hiſt. Law* 29, 30, 31. By Election the Biſhop is *Epiſcopus nominis, non Ordinis, neq; Juriſdictionis*; for notwithſtanding his Election, he hath nothing, but by the Confirmation he obtaineth

taineth *potestatem Jurisdictionis*, as of Excommunication, &c. 8 *Co.* 89. which ought to be understood when he is confirmed; for then ceaseth the Power of the Guardian of the Spiritualties. *Dy.* 350. But after the Election, and the Consecration he hath *potestatem Ordinationis*, and may consecrate Churches, confer Orders, &c. *Palm.* 473.

2. A Prebendary of *Sarum* is chosen Bishop of *Sarum*, and hath Restitution of the Temporalties; yet till Consecration the Prebend is not void. *Palm.* 475. 11 *H.* 4. 37, 38, 59, 60, 76, 77. 46 *E.* 3. 32. 22 *H.* 6. 27. *Dy.* 223, 233, &c.

3. The Consecration of a Bishop is a publick and notorious Act. 1 *Vent.* 320.

4. Agreed by all the Judges, that by the Election only, till Confirmation, the Elect hath nothing in him, neither in the Case of Translations, nor Creation. 4 *H.* 4. 2. 9 *H.* 5. 13. and 20 *E.* 3. *Breve* 250. That the Name is not changed in Case of Creation till Consecration, &c. 38 *E.* 3. 31. It is said to be *tanquam embrio in utero.* Palm. 474. which till Confirmation the Elect might be refused; and therefore to this Day there is a Citation to oppose, and therefore the Power which he hath, he hath by Confirmation. *Palm.* 474.

5. The Chief Justice and *Dodderidge* said, that the Bishop hath no more in the Church by Election, than the Parson hath by Presentation, and if a Man presents to a Church, he may revoke it, and present another, and if the Bishop will institute the first, a *Quare impedit* lieth against him; and therefore it was

as agreed by all, that the Dignities before ken were not void (in the Caſe of a Bi-op) before Conſecration. *Palm.* 475.

6. Notwithſtanding the Canon of the Council of *Lateran*, Biſhopricks ſtill reſted s before Donative, in the Time of *Will.* 1. ut in the Time of *Will. Rufus*, *Anſelme* ad-ering to the Canon withſtood the King, who gave his Biſhopricks by Patents, and by nveſtiture *per Annulum & Baculum*, for hich *Anſelme* was baniſhed; but being re-alled in *Hen.* 1.'s Time, the Queſtion was evived, and *Anſelme* baniſhed a ſecond ime; but after the King agreeing with the ope, that all Biſhops then made ſhould re-ain, and that for the future they ſhould be lective, *retento Regalium privilegio*, which as againſt Common Law, yet held till ing *John*. That the Prior and Monks of *anterbury* choſe their Superior Archbiſhop, ho was refuſed by the Pope, not being *anonice*, and after *Langton* was appointed y the Pope, and for the King's not agree-ng thereto, the Kingdom was interdicted or five Years, *Palm.* 471. as is elſewhere hewn. For the Election of Biſhops, ſee *Palm.* 23, *&c. Fitz. Nat. Brev.* 169. 6 *Co.* 9. 8 *Co.* 5.

3. *Their qualificatory Acts.*

1. Every Biſhop vows Obedience to his Superior, and the King is his Superior. 32 *H.* 8. 28. *Palm.* 464, 472. *Watſon* Biſhop of *St. David's* Caſe in *Salk. Rep.*

2. All

2. All Biſhops in *H.* 8. and *E.* 6. Reigns took out Licences, or Commiſſions for conferring Orders, and for exerciſing of all other Parts of Archiepiſcopal and Epiſcopal Juriſdiction, in the Name of the King, and by Virtue of his Authority *during his Majeſty's good Pleaſure.* They have no Juriſdiction, but by, under, and from the King; from whom the ſame is derived. Inhibitions were ſent to them, ſuſpending their Viſitatorial Power, and the Exerciſe of all Epiſcopal Juriſdiction throughout the Kingdom, till Licence obtained from the King; *for that the King himſelf intended ſhortly to viſit.*

4. *Their Antiquity.*

1. For their Antiquity, *&c.* ſee *Palm.* 23 *to* 28.

5. *Their Precedency.*

1. Biſhops are Peers. *Palm.* 25, 26.

2. The Lords Spiritual or Biſhops ſit in Parliament on the King's Right Hand, by themſelves; 1. The Archbiſhop of *Canterbury.* 2. Then the Archbiſhop of *York*, on the ſame Form. 3. Then the Biſhop of *London.* 4. The Biſhop of *Durham.* 5. The Biſhop of *Winton*, and then all the other Biſhops of both Provinces, according to Seniority, or Standing. *Stat.* 31 *H.* 8. *c.* 10. But in Regard to the other Peers, both the Archbiſhops have Place above all the Great Officers and Nobility in Parliament, Council and Commiſſions; ſaving in the Star-Cham-

ber

er, (when that Court ſubſiſted) the Lord Chancellor, or Lord Keeper, hath the Precedency of them. 4 *Inſt.* 361, 364. *But the Lord Chancellor is Preſident or Speaker in the Houſe of Lords.*

3. Biſhops Dioceſans have Place above all Barons of the Realm; becauſe they hold their Biſhopricks of the King *per Baroniam*; but they give Place to Viſcounts, Earls, Marquiſſes and Dukes. 4 *Inſt.* 361.

4. If a Biſhop be the King's Principal Secretary, he ſhall take the Place of all other Biſhops not having any of the Grand Offices of State, but not above the Archbiſhops. 4 *Inſt.* 362.

5. If a Biſhop of this Realm be made a Cardinal, he ſhall not take any Place of Precedency in Parliament as Cardinal, but in Right of his Biſhoprick, which he holdeth of the King *per Baroniam*, in Reſpect whereof he ſitteth in Parliament. 4 *Inſt.* 362. So that his foreign Orders avail him not here.

6. The Precedency in Parliament and other Places of Council at this Day, is the two Archbiſhops, of all the Lords Temporal. 4 *Inſt.* 364.

7. Every Biſhop or Ordinary of the Dioceſe, before an Archbiſhop, in Reſpect of his Barony, hath Place of all the Barons of the Realm, and under the Eſtate of Viſcounts, and other Superior Dignities. 4 *Inſt.* 364.

8. The Eccleſiaſtical State, as it ſtandeth at this Day, is divided into two Provinces, or Archbiſhopricks, (*viz.*) *Canterbury* and *York*: The Archbiſhop of *Canterbury* is *Metropolitanus, & Primas totius Angliæ*; and the

the Archbiſhop of *York Primas Angliæ*; and each Archbiſhop hath within his Province Suffragan Biſhops of Dioceſes. All the Archbiſhopricks and Biſhopricks in *England* were founded by the King's of *England* to hold by Barony, and every Archbiſhop and Biſhop hath his Dean and Chapter. The Archbiſhop of *Canterbury* hath Precedency of the Reſt of the Biſhops, and next to him the Archbiſhop of *York*, next the Biſhop of *London*, then the Biſhop of *Durham*, then the Biſhop of *Wincheſter*, and then the Reſt of both Provinces after their Standing as Biſhops. *Co. Lit.* 94. *a.*

6. *Their Power and Authority.*

1. *The Sorts, and when, and how gained.*

1. A Biſhop hath three Powers, the firſt is *Ordinationis*, and this he gaineth by his Conſecration, and not before, and by this he may take Reſignations of Churches, confer Orders, conſecrate Churches, and this doth not belong to him *quatenus* Biſhop of this or that Place, but is univerſal all the World over; and therefore the Biſhop of *Spolato*, when here, might have conferred Orders. The ſecond is *Poteſtas Juriſdictionis*, which is not univerſal, but tied to a certain Place, and confined to his Fee; as to take Oaths, Excommunication, to correct and puniſh Offences; and this Power he takes by Confirmation. The Third is *Adminiſtratio rei familiaris*, (*viz.*) Government of

of the Revenues; and this is gained alſo by Confirmation. *Palm.* 473.

2. *As to Viſitation.*

1. *To what End.*

1. The chief Cauſe and Uſe of Viſitation is, that the Biſhop, Archdeacon, or others aſſigned to viſit, may get ſome good Knowledge of the State, *&c.* of the Clergy and other Perſons whom they are to viſit; therefore every Parſon, Vicar, Curate, Schoolmaſter, or other Perſons licenſed, do at the Biſhop's firſt Viſitation, or at the next Viſitation after his Admiſſion, ſhew his Letters of Orders, Inſtitution and Induction, and all other his Diſpenſations, Licences or Faculties, to be by the Biſhop, either allowed or (if juſt Cauſe) diſallowed, and being by him approved, to be, as the Cuſtom is, ſigned by the Regiſter, and that the whole Fees accuſtomed to be paid in the Viſitation, in Reſpect of the Premiſſes, be paid only once, in the whole Time of every Biſhop, and after but Half the accuſtomed Fees, in every other Viſitation, during the ſaid Biſhop's Continuance. *Can.* 137.

This nor no other of the Canons bind the Laity; therefore ſo much thereof as relates to the Laity is an Invaſion on the Common Law, and as ſuch void.

7. *Their*

7. *Their Spiritualties.*

1. Spiritualties of Biſhops, *Spiritualia Epiſcopi*, are thoſe Profits which he receives, as he is Biſhop, and not as he is a Baron of Parliament. (*Staundf. Pl. Coro.* 132.) Such are the Duties of his Viſitation. *Blo. Law Dict.* Tit. *Spiritualties of Biſhops.*

8. *Their Temporalties.*

1. In *Hen.* 2d's Times the ancient Cuſtoms of the Realm were revived, namely, that all Biſhopricks and Abbies being void, ſhould remain in the King's Hands, as his own Demeſnes, until he had choſen and appointed a Prelate thereunto, and that every ſuch Prelate ſhould do Homage to the King, before he was admitted. *Da.* 90. *b.* 91. *a.* 92. *a. b.*

2. It was ſettled in King *John*'s Time, on making Biſhopricks elective, that Biſhops ſhould not have their Temporalties till they had ſworn Allegiance. *Watſon* Biſhop of *St. David*'s Caſe, *Salk. Rep.*

9. *Their Tranſlations.*

1. In Caſe of Tranſlations from one Biſhoprick to another, five Things are to be done. 1ſt, Intimation, by the Chapter, of the Death of their Biſhop, and Prayer

f a *Conge d'Eſlier.* 2. Leave to them to hooſe. 3. Certificate of the Election. Aſſent of the King and Archbiſhop. Writ to the Biſhop to confirm and in-al him; for in Caſe of Tranſlation there no Conſecration. *Palm.* 462, 472, 473.

10. *The Archbiſhop of* Canterbury.

1. *Particular to him.*

1. *What was his Stile, and Precedency, tho' now gone with the Pope's uſurped Authority.*

1. Pope *Urban*, *tempore Johannis Regis* in Recompence of that King's remitting the nveſtiture of Biſhops and Abbots *per Baculum & Annulum*, and making the ſame lective by their Churches, Cathedral and Conventual, yielded that from thenceforth, o Legates ſhould be ſent from the Pope nto *England*, unleſs the King ſhould re-uire it, and that the Archbiſhop of *Canerbury*, for the Time being, ſhould be for ver *Legatus natus*; and *Anſelme* (that Rebel Biſhop) for the Honour of his See, obtained that the Archbiſhop of *Canterbury* ſhould n all General Councils, ſit at the Pope's Feet, *tanquam alterius Orbis Papa. Dav.* 90. *b.* Tho' this Stile and Precedency is now one, and abrogated, with the Pope himſelf, s is *Rol. Abr.* tit. *Prohibition*, and in *Hob.* 7.

II. *Dean and Deanery.*

1. *The Deanery.*

1. *Of what a Deanery conſiſteth.*

1. IT conſiſteth of two Parts, *Officium* & *Beneficium*, and the one is the Reward of the other. The Office hath two Parts. 1ſt, Dignity and Juriſdiction. 2. The Adminiſtration. *Palm.* 460, 461.

2. *The Dean.*

1. *What a Dean is, the Sorts, and his Continuance.*

1. A Dean is an Eccleſiaſtical, Secular, Governor, and was anciently over ten Prebendaries or Canons, at the leaſt, in a Cathedral Church, and is Head of his Chapter. *Co. Lit.* 59. *a.*

2. There are alſo Rural Deans, being ſuch Perſons as have Eccleſiaſtical Juriſdiction over other Miniſters and Pariſhes, near adjoining, aſſigned them by the Biſhop and Archdeacon, being placed and diſplaced by them; ſuch are the Dean of *Croyden* in *Surrey*, Dean of *Battel* in *Kent*, &c. *Blo. Law Dict.* ſub. Tit. *Dean.*

3. He remains as long as the Biſhoprick. 3 *Co. Dean and Chapter of Norwich's* Caſe.

2. *His*

2. *His Acts good or void.*

Vide Palm. 461, 494, *&c.*

3. *Whether exempt from Epiſcopal Juriſdiction.*

1. THO' a Dean, *&c.* is, to ſome Purpoſes, ſubject to the Juriſdiction of the Biſhop; yet as to a Peculiar, it is the ſame as if he was a Stranger, and is no more under his particular Biſhop than any other, neither is it to be intended, if it doth not appear, that he is within the Biſhop's Juriſdiction. *Skin.* 589.

Though Eccleſiaſticks have pretended ſuch ſhould be obedient as Subjects to their Sovereign, and ſo they held it was, that a Biſhop could not hold a Benefice in his own Dioceſe; becauſe, as they arrogantly pretended, he could not be both Sovereign and Subject; whereas the true Reaſon was, is, and always muſt be, becauſe he could not viſit himſelf. See the Biſhop of *Cheſter*'s Caſe, concerning the Wardenſhip of *Manchester*, and many other Authorities in the Books.

4. *His Duty.*

1. *To his Cathedral.*

1. EVery Dean, Maſter or Warden, or chief Governor of any Cathedral or Collegiate Church, ſhall be reſident in his ſaid Cathedral or Collegiate Church fourſcore and ten Days, *Conjunctim* or *Diviſim*, in every Year at leaſt, and then ſhall continue there, Preaching the Word of GOD, and keeping good Hoſpitality, except (*prout* in the ſaid Canon) and when he is preſent,

he with the reſt of the Canons or Prebendaries reſident, ſhall take ſpecial Care, that the Statutes and laudable Cuſtoms of their Church, not being contrary to the Word of GOD, or Prerogative Royal, the Statutes of this Realm being in Force concerning Eccleſiaſtical Order, and all other Conſtitutions, *&c.* according to the Statutes and Cuſtoms of the ſame Church, or the Eccleſiaſtical Laws of this Realm, be diligently obſerved, and that the Petit Canons, Vicars, Chorals, and other Miniſters of their Church, be urged to the Study of the Holy Scriptures, and every one of them to have the New Teſtament not only in *Engliſh*, but alſo in *Latin*. *Can.* 42.

2. The Dean, Preſidents, and Reſidentiaries, of any Cathedral or Collegiate Church, ſhall ſuffer no Stranger to preach unto the People, in their Churches, except they be allowed (*prout* in the ſaid Canon). *Can.* 51.

3. If any in his Sermon in any Cathedral or Collegiate Church ſhall publiſh any Doctrine, either ſtrange or diſagreeing from the Word of GOD, or from any of the Articles of Religion, agreed upon in the Convocation-houſe *Anno* 1562, or from the Book of Common Prayer; the Dean or the Reſidents ſhall by their Letters ſubſcribed with ſome of their Hands that heard him, ſo ſoon as may be, give Notice of the ſame to the Biſhop of the Dioceſe, that he may determine the Matter, and take ſuch Order therein, as he ſhall think convenient. *Can.* 51.

4. The

4. The Dean, Maſter, Warden, or chief Governor, Prebendaries, and Canons in every Cathedral and Collegiate Church ſhall not only preach there in their own Perſons, ſo often as they are bound by Law, Statute, Ordinance or Cuſtom, but ſhall likewiſe preach in other Churches of the ſame Dioceſe where they are reſident, and eſpecially in thoſe Places whence they or their Church receive any yearly Rents or Profits; and in Caſe themſelves be ſick, or lawfully Abſent, they ſhall ſubſtitute ſuch licenſed Preachers to ſupply their Turns, as by the Biſhop of the Dioceſe ſhall be thought meet to preach in Cathedral Churches; and if any otherwiſe neglect, or omit to ſupply his Courſe, as is aforeſaid, the Offender ſhall be puniſhed by the Biſhop, or by him or them to whom the Juriſdiction of that Church appertaineth, according to the Quality of the Offence. *Can.* 43.

III. *Reſidentiaries.*

1. *Their Duty as ſuch,*

Vide *Dean, his Duty, to his Cathedral Church.*

1. NO Prebendaries nor Canons in Cathedral nor Collegiate Churches, having one or more Benefices, with Cure, and not being Reſidentiaries in the ſame Cathedral or Collegiate Churches, ſhall, under Colour of their ſaid Prebends, abſent themſelves from their Benefices with Cure

above the Space of one Month in the Year, unleſs for ſome urgent Cauſe, and certain Time to be allowed by the Biſhop of the Dioceſe. And ſuch of the ſaid Canons and Prebendaries, as by the Ordinaries of the ſaid Cathedral or Collegiate Churches do ſtand bound to be reſident in the ſame, ſhall among themſelves ſort and proportion the Times of the Year, concerning Reſidence to be kept in the ſaid Churches, as that ſome of them ſhall be always perſonally reſident there; and that all thoſe who be, or ſhall be Reſidentiaries, in any Cathedral or Collegiate Church, ſhall after the Days of their Reſidency, appointed by their local Statutes, or Cuſtoms, expired, preſently repair to their Benefices, or ſome one of them, or to ſome other Charge where the Law requireth their Preſence, there to diſcharge their Duties, according to the Laws in that Caſe provided. And the Biſhop of the Dioceſe ſhall ſee the ſame duly performed and put in Execution. *Can.* 44.

IV. *Prebend and Prebendary.*

1. *Prebend.*

1. *What.*

1. PRebend, *Præbenda*, is that Portion which every Prebendary of a Cathedral, or Collegiate Church, receives in Right of his Office, for his Maintenance. *Blo. Law Dict. ſub hoc Tit.*

2. *Præbenda*

2. *Præbenda* is a ſeveral Benefice ariſing from ſome temporal Lands, or Church appropriate towards the Maintenance of a Clerk or Member of a collegiate Church, and is commonly ſurnamed of the Place whence the Profit ariſeth. *Blo. Law Dict. ſub hoc Tit.*

2. *Prebendary.*

1. *What, and from whence denominated.*

1. PRebendary, *Præbendarius*, is he who hath a Prebend, and is ſo called *a Præbendo auxilium & conſilium Epiſcopo.* Blo. Law Dict. ſub hoc Tit. Vide *Prebend, what.*

2. *The Sorts.*

1. Prebends are either Simple, or with Dignity; the former are ſuch as have only a Revenue towards their Maintenance; the other, that is with Dignity, are ſuch as have ſome Juriſdiction annexed to them, according to the ſeveral different Orders in the ſeveral and reſpective Churches. *Blo. Law Dict. ſub hoc Tit.*

So that ſome Prebendaries are Dignitaries, and ſome not, as not having Juriſdiction annexed.

2. The golden Prebendary of *Hereford, aliter dict. Prælendarius Epiſcopi*, is one of the twenty-eight minor Prebendaries there, who has, *ex Officio*, the firſt Canon's Place that falls; he was anciently *Confeſſarius* of the Cathedral Church, and to the Biſhop, and had the Altarages, whereby in Reſpect of the Gold, and other rich Offerings, for-

merly made there, he had the Name of Golden Prebendary. *Blo. Law Dict. ſub hoc Tit.*

3. *His Office.*

1. Prebendaries, *Qui præberent auxilium Epiſcopo*, in Advice or Conſultation, for the Suppreſſing of Hereſy and Errors, and true Inſtruction of the People in Religion and Spiritual Worſhip of GOD, committed to their Charge, and in Celebration of Divine Service, *&c.* 11 *Co.* 75. *a.*

2. Lord *Coke* ſays, foraſmuch as it was not thought poſſible, That the Church of GOD ſhould remain without Sects and Hereſies, it was, in Chriſtian Policy, upon moſt mature Conſideration, thought neceſſary, That every Biſhop ſhould be aſſiſted with a Council, (to wit) with a Chapter, and that for two Cauſes; 1ſt, To conſult with in Matters of Difficulty, and to aſſiſt him in deciding of Controverſies concerning Religion, to which Purpoſe his Lordſhip ſays, every Biſhop *habet Cathedram.* 2. To conſent to every Grant, *&c.* which the Biſhop ſhall make to bind his Succeſſors; for it would be, ſaith his Lordſhip, unreaſonable to impoſe ſo great a Charge upon, or to repoſe ſo great a Confidence in, any ſingle Perſon, or to give Power to one Perſon only, to hurt his Succeſſion. *Præbenda dicitur a Præbendo, quia præbet auxilium Epiſcopo*, ſo that though a Dean and Chapter depart with their Eſtates, yet, for Neceſſity, the Corporation remains; as well to aſſiſt the Biſhop in his Function, as to give Aſ-

ſent

ent to thoſe Eſtates, &c. which he ſhall nake, &c. of his Temporalties; and ſo long s the Biſhoprick remains, they remain; hey being his Chapter and Council, and hat though they have no Poſſeſſions. If a Prebendary's Corps be recovered by Title Paramount, yet his Corporation remaineth; for he hath *Stallum in Choro, & Vocem in Capitulo*, and all the Chapter are Prebendaries. There may be Dean and Chapter without a Biſhop, or any Poſſeſſions. 3 *Co.* 73, &c. *And that, as I imagine, as they were, before the Diſſolution of Religious Houſes,* Confreres *or Brethren of ſuch a Corporation as had a Head to whom they were of Council.*

4. *His Continuance.*

1. Dean and Chapter remain as long as the Biſhoprick, and the Prebendary hath *ſtallum in Choro, & vocem in Capitulo*, and is ſtill a Prebendary, though he hath no Poſſeſſions; nay, there may be Dean and Chapter without either Church or Poſſeſſions. 3 *Co.* Dean and Chapter of *Norwich*'s Caſe.

2. Where Poſſeſſions of a Prebend are annexed to the Deanery of *Wells*, as in Lord *Dyer* 273 & 233. yet clearly the Prebend continues; though the Poſſeſſions are gone, yet the Office remaineth. *Palm.* 461. 4 *Co. Holland*'s Caſe, *fo.* 75. *Dav.* 77. *b.* See the Caſe; ſee alſo *His Office.*

5. *Of*

5. *Of their Residence.*

1. Such Canons and Prebendaries as by the Ordinances of their Cathedral or Collegiate Churches are bound to Residence, shall so sort amongst themselves and proportion the Times concerning Residence, &c. *prout* in the Canon 44, as is mentioned before, under the Division *Deans and Residentiaries, their Duties to their Churches.*

V. *Canons and Canonries.*

1. *Canonry.*

1. *What.*

1. CAnonica *Portio* is properly used for that Share which every Canon receiveth yearly out of the Common Stock of the Church. *Blount's Law Dict.* sub Tit. *Prebend.*

2. *Canons.*

1. *What; from whence collected or elected, and wherefore so called.*

1. CAnons are so called; because they were Men who had their Commons and Portions, in the Canons and Revenue of the Church. And they ought to be assisting and aiding to the Bishop in his Business, as such. *Palm.* 26. See 3 *Co.* 75.

2. Canons,

2. Canons, as well as Prebendaries, are Common Council with the Biſhop, and, *ppoſed to be*, collected out of all the Clergy his Dioceſe, and *they formerly were conſi-red* as repreſenting, and in the Place of all e Clergy of his Dioceſe, as our Burgeſſes Parliament repreſent the Realm. *Palm.* 26.

FH
MVSEVM
BRITANNICVM

VI. *Rector and Rectory.*

1. *Rectory.*

1. *General.*

IF it doth not conſiſt of Glebe and Tithes, it is no Rectory, but a Par-onage only. 1 *Keb.* 368. *Blount's Law Dict. ub hoc Tit.*

2. *When firſt began.*

1. *Morton:* Rectories came in after the Council of *Lateran*, and Vicars came in he 17th Year of King *John*. *Morton:* Be-ore the Council of *Lateran*, the Biſhop pro-ided Teachers, and received the Tithes him-elf; but ſince he hath appointed others to hat Charge, and ſaith, *accipe Curam tuam & ueam.* 1 Mod. 12.

2. *Rector.*

1. *What.*

1. *Rector Eccleſiæ Parochialis* is he who hath the Charge, or Cure, of a Pariſh Church; *Qui tantum jus in Eccleſia Parochiali habet, quantum prælatus in Eccleſia Collegiata.* Blount's Law Dict. ſub hoc Tit. Cowel's Interp. *vide & q'.*

VII. *Parſon and Parſonage.*

1. *Parſonage.*

1. *What it is, and how it differs from a Vicarage.*

1. A Parſonage or Rectory is a Spiritual Living compoſed of Lands, Tithes, and other Oblations of the People, ſeparated and dedicated to God, in any Congregation, for the Service of his Church there, and for the Maintenance of the Miniſter, to whoſe Charge the ſame is committed. *Blount's Law Dict. Parſonage.*

2. A Parſonage and Vicarage are two ſeveral Eccleſiaſtical Benefices. *Palm.* 220, 221.

2. How

2. *How may be conferred.*

1. *The ſeveral Ways.*

1. A Parſonage or Vicarage may be well conferred ſeveral Ways, *ſans* Preſentation, Inſtitution, and Induction. 1. By Way of Appropriation. 2. By Way of Union. 3. By Way of Permutation. 4. By Way of *Commendam*: And formerly when the Pope uſurped Juriſdiction in *England*, by Way of Proviſion. 1. As to Appropriation, ſee *Plow. Com. Grendon's* Caſe, 500. *a.* 503. *a.* where it appears, that the King, (*who had good Authority to do it, as* Plow. *there ſaith,*) had in the Patent of Appropriation diſpenſed with Admiſſion, Inſtitution, and Induction, and had given Power to the Dean and Chapter of *Wiggorne*, to whom the Appropriation was made, to enter into the Parſonage, and to retain it *ſans auter ceremonie*, and this was reſolved, and adjudged a good Diſpenſation. (See the Patent of Appropriation in the ſaid Caſe of *Grendon*, *fo.* 494. *a.*) *Dav.* 81. *b.* As to Union, ſee 11 *H.* 7. 8. where a Chapel being full of an Incumbent, was united to *Magdalen College* in *Oxford*, and after the Incumbent reſigned, the Preſident and Scholars entered into the Chapel without any other Donation, or Induction; and this agrees with *Rebuffus in Regula de unionibus*, where he ſaith, *Poſſeſſio apprehendi poteſt propria authoritate in unione.* See alſo 50 *E.* 3. 27. 40 *E.* 3. 48. As to Permutation, ſee 2 *H.* 4. 11. *a.* where it is ſaid, that upon Permutation, Entry is lawful, without more ado.

ado. See alſo 21 *E.* 3. 6, 7. *Vide Rebuffi in Praxi Beneficiorum*, Tit. *De Collationibus* 663. *Quot ſunt requiſita in promotione beneficiorum.* Dav. 81. b.

2. *Parſon.*

1. *What.*

1. PArſon, or *Perſona Imperſonata*, Parſon Imparſonee, is the Rector, who is in the Poſſeſſion of the Church Parochial, be it Preſentative, or Impropriate, and of whom the Church is full. *Co. Lit.* 300. *a.*

2. *The Advantages.*

1. The making one Parſon makes him Poſſeſſor of the Parſonage; for a Spiritual Office draws with it a Right to have all the Poſſeſſions; and therefore when one is an Appropriator, he lawfully may intermeddle with the Tithes, as the ſame are annexed to his Church. *Plow. Com.* 500. *a. b.*

3. *The Duty of Parſons Spiritual.*

1. *What ſhould be, and do.*

1. IT is the Eſſence of a Paſtor to be *didacticus*, to teach the People in their own Language, and alſo to do as 1 *Tim.* iii. 2 *Cor.* i. 14. and they ought alſo to be *Hoſpitales*, as the Statute of *Carliſle* ſaith, To do Alms and other Acts of Charity in the Place where

here their Churches were founded. See *Job. fo.* 148. and Statute of Proviſors 25 *E.* 3. 2. Every Parſon of a Church ought to be *perſona idonea*; as appears by the Words of he *Quare impedit*, *Quod permittat præſentare doneam perſonam*, &c. which Epithet, *Idonea*, ncludes Ability in Learning, in Doctrine, Honeſty in Converſation, and Diligence in is Function, and all this to inſtruct the People of God in true Religion, and good Converſation, and to avoid Contention, &c. 5 *Co.* 49. *b.*

VIII. *Vicar and Vicarage.*

1. *Vicarage.*

1. *The Sorts*, &c.

1. THERE are two Sorts of Vicarages, *Vicaria Temporalis*, & *Vicaria perpetua*; the firſt is called Temporal, becauſe ſuch Temporal Vicar *non habet titulum, ſed ſervit alieno nomine & propric curam non habet. Secus eſt de Vicaria perpetua, quæ eſt incompatibilis cum alio Beneficio, & habet curam animarum, & talis Vicarius habet titulum Canonicum*; and a *Quare Impedit* lieth of ſuch perpetual Vicarage. *Fitz. Nat. Brev.* 32. (H.) *Regiſter* 31. *a.* And ſuch Vicar ſhall have a *Juris utrum* of Lands annexed, or given to him perpetually, by the Statute 14 *E.* 3. c. 17. *Vide* 40 *E.* 3. 28. *b.* where *Finden* ſaith, that though it hath been held, that a Vicar ſhall not have an Action of his Poſſeſſions againſt any Perſon, yet the Law is changed in

in that Point, and with Reason, when he endowed to him and his Successors perpetu *Dav.* 83. *a.*

2. *How dissolved.*

1. A Vicarage, not presentative, may be dissolved without the Consent of the Crown; but if presentative, *aliter.* Palm. 221. *Vide Faculties.*

2. *Vicar.*

1. *What.*

1. VICAR, *Vicarius*; the Priest of every Parish is called Rector; unless the predial Tithes are impropriated, and then he is called Vicar, *quasi vice fungens Rectoris.* Blount's Law Dict. *Tit.* Vicar.

IX. *Stipendiary Priest.*

1. *What.*

1. A Stipendiary Priest is one whose Stipend is certain. 4 *Co.* 109. *a.* 111. *a.*

2. *His Office.*

1. A Stipendiary or hired Priest is within the Statute of 13 *Car.* 2. of Conformity, notwithstanding the Words of the Statute, that the Patron shall present as if he were dead; and in this Case no Presentation is necessary, but only a Nomination. 3 *Lev.* 83.

2. A Stipendiary Prieſt deprived *ſur le Statute* 13 *Car.* 2. of Conformity, though he be *ipſo facto* deprived, for not declaring his Aſſent within two Months after his firſt Nomination and Placing; yet this Statute doth not diſable him to have a new Nomination, as in the Caſe of Simony; and a Continuance in Poſſeſſion, and Performance of the Office, by Permiſſion and Allowance of the Patron, amounts to a new Nomination. 3 *Lev.* 83.

X. *Chaplains.*

1. *General.*

A Chaplain, *Capellanus*, is he who performs Divine Service in a Chapel; and therefore in our Common Law it is uſed ordinarily for him who is dependant upon the King, or other Man of worth, for the Inſtruction of him and his Family, for ſaying Prayers and Preaching in his private Houſe, where commonly they have a Chapel for that Purpoſe; as *anno* 21 *H.* 8. *cap.* 13. where are named the Honours and Offices privileged to retain Chaplains, to diſcontinue from their Benefices, for their, the King's or other Patron's, private Service. *Cowel's Interp. Chaplain.* Vide *Faculties, &c.*

2. Chaplain Secular is he who is *infra ſacros Ordines*, but he is not Regular, that is, liveth not under Rule, nor hath vowed Obedience, wilful Poverty, and perpetual Chaſtity. *Co. Lit.* 135. *b.* 136. *a.* Vide infra *Faculties, &c.*

II. *Ecclesiastical Laws.*

A. *General.*
B. *Their Origin.*
C. *Their Antiquity and Purpose.*
D. *From whence they derive their Authority, and whereto subordinate.*

I. *From the Crown, and from the Superior Common and Statute Laws.*

1. *General.*
2. *Particular Instances.*
3. *Who bound thereby.*

A. *General.*

1. SPiritual Law is the Ecclesiastical Law allowed by the Laws of this Realm, and which are not against the Common Law of the Land, or the Statutes and Customs of the Realm; and these are the Laws by which the Ordinary, and all

all other Ecclesiastical Judges, ought to govern themselves in Causes cognizable by them. *Co. Litt.* 344. *a.* See *Hale's Hist. of the Law. Hard. Rep. Dav. Rep. Dr. and Stud. &c.* Vide post *Ecclesiastical Laws, Their Origin.*

2. The Ecclesiastical Law of *England* is not the Law of the Pope; but is extracted from antient Canons, as well General, as National. *Palm.* 458. Vide postea *Their Origin, and their Antiquity here.*

B. *Their Origin.*

1. ASsuredly, for the Space of 300 Years first after *Christ*, the Distinction of Ecclesiastical or Spiritual Causes, in Point of Jurisdiction, did not begin; for at that Time no such Distinction was heard of in the Christian World; for the Causes of Testaments, Matrimony, of Bastardy and Adultery, and the Rest, which are called Ecclesiastical or Spiritual Causes, were merely Civil, and determined by the Rules of the Civil Law, and subject only to the Jurisdiction of the Civil Magistrate; as all Civilians will *allow* and testify. But after the Emperors were become Christians, out of a Zeal and Desire they had to grace and honour the learned and godly Bishops of that Time, they were pleased to single out certain special Causes, wherein they granted Jurisdiction to Bishops, namely in Cases of Tithes; because paid to Men of the Church; in Causes of Matrimony; because Marriages were, for the most part, solemnized in

the Church; in Cauſes Teſtamentary; becauſe Teſtaments were, many Times, made *in extremis*, when Churchmen were preſent giving Spiritual Comfort to the Teſtator; and therefore they were thought the fitteſt Perſons to take the Probates of ſuch Teſtaments; yet theſe Biſhops did not proceed in theſe Cauſes according to the Canons and Decrees of the Church (for the Canon Law was not then hatched or dreamt of) but according to the Rules of the Imperial Law, and as the Civil Magiſtrate proceeded in other Cauſes; neither did the Emperors in giving this Juriſdiction unto them, give away their own Supreme and abſolute Power, to correct and puniſh theſe Judges, as well as others, if they performed not their ſeveral Duties. This then is moſt certain, that the primitive Juriſdiction in all theſe Cauſes was in the Civil Magiſtrate; and ſo in Right it remaineth at this Day, as in a Fountain; for every Chriſtian Monarch (as well as the godly Kings of *Juda*) is *Cuſtos utriuſque Tabulæ*, and conſequently hath Power to puniſh, not only Treaſon, Murder, Theft, and all Manner of Force and Fraud; but Inceſt, Adultery, Uſury, Perjury, Simony, Sorcery, Idolatry, Blaſphemy; neither are theſe Cauſes, in Reſpect of their own Quality and Nature, to be diſtinguiſhed one from another, by the Names of Spiritual and Temporal; for, to ſpeak properly, that which is oppoſed to Spiritual ſhould be termed Carnal, and that which ſhould be oppoſed to Temporal ſhould be called Eternal; and therefore, if Things ſhould be called by their proper Names, A-

dultery

dultery ſhould not be called a Spiritual Offence, but a Carnal; but to ſpeak plainly and freely, why theſe Cauſes were firſt denominated ſome Spiritual or Eccleſiaſtical, and others Temporal and Civil; truly they were not ſo called from the Nature of the Cauſes, but from the Quality of the Perſons whom the Princes had made Judges in thoſe Cauſes. The Clergy ſtudied Spiritual Things, and profeſſed to live *ſecundum ſpiritum*, and were called Spiritual Men; and therefore they called the Cauſes, wherein Princes had given them Juriſdiction, Spiritual Cauſes, after their own Name and Quality; but becauſe the Lay Magiſtrates were ſaid to attend the Things of this World, which are temporal and tranſitory, the Clergy called them Secular, or Temporal Men, and the Cauſes wherein they were Judges, Temporal Cauſes. This Diſtinction began firſt in the Court of *Rome*, where the Clergy having by this (indulged) Juriſdiction gotten great Wealth, that Wealth begot Pride, their Pride begot Ingratitude to Princes, who firſt gave them their Juriſdiction; and then, according to the Nature of all ungrateful Perſons, they went about to extinguiſh the Memory of the Benefit; for whereas their Juriſdiction was firſt derived from *Cæſar*, in the Execution whereof they are but *Cæſar*'s Judges, ſo as both their Courts and Cauſes ought ſtill to have born *Cæſar*'s Image and Superſcription, as to him belonging; they blotted *Cæſar*'s Name out of the Stile of their Courts, and called them Courts Chriſtian, as though the Courts holden by other Magiſtrates had been, in Compariſon, but

the Courts of *Ethnicks*, and the Cauſes, which in their Nature were merely Civil, they called Spiritual and Eccleſiaſtical; ſo as if the Emperor ſhould challenge his Courts and Cauſes again, and ſay *reddite Cæſari, quæ ſunt Cæſaris*, they would all cry out, *una voce*, on the contrary Party *date Deo, quæ ſunt Dei*, our Courts bear the Name and Title of *Chriſt*, the Superſcription of *Cæſar* is quite worn out, and not to be found upon them; and this Point of their Policy is worth obſerving, that when they found their Juriſdiction in Matrimonial Cauſes to be moſt ſweet and gainful of all others, (for of Matrimony, ſays our Reporter, they made Matter of Money indeed,) to the End that *Cæſar* might not reſume ſo rich a Perquiſite of their Spiritual Juriſdiction, they introduced Matrimony into the Number of their Seven Sacraments; after which it had been no leſs than Sacrilege, had the Civil Magiſtrates intermedled with the leaſt Matter, that had Relation to Matrimony, or any Dependance thereupon; ſo it appears, that all Cauſes, whereof Eccleſiaſtical or Spiritual Perſons have Cognizance or Juriſdiction, tho' they (certainly, and paſt all Contradiction) are merely by the Grants or Permiſſion of Princes, are called Eccleſiaſtical or Spiritual Cauſes; and as all ſuch Cauſes are called Spiritual Cauſes, ſo the Courts too where they are determinable muſt be needs called Spiritual Courts. *Davis Rep.* 97. *b.* 98. *a. b. Vue tout le caſe & note bien.*

C. *Their*

C. *Their Antiquity and Purpoſe.*

1. ECcleſiaſtical Laws were made in *England*, for the Government of the Church of *England*, not only ſince, and from the *Norman* Conqueſt, but long before the Canon Law was authoriſed and publiſhed, (*viz.*) *Edgar*, *Athelſton*, *Alfred*, *Edward* the Confeſſor, and others, have with the Advice of their Clergy, within this Realm, made ſeveral Ordinances for the Government of the Church; and ſince the Conqueſt divers Provincial Synods have been held, and many Conſtitutions have been made in both Realms, of *England* and *Ireland*, all which are Part of our Eccleſiaſtical Laws to this Day. *Dav.* 72. *b.*

D. *From whence they derive their Authority and whereto ſubordinate.*

I. *From the Crown, and Common and Statute Laws.*

1. *General.*
2. *Particular Inſtances.* 152.
3. *Who bound thereby.* 162.

1. *General.*

1. WHen *we ſay the Eccleſiaſtical Laws and Courts are inferior, and ſubject to the Controul of the Common Law, and the*

Courts of Law; we muſt be rather underſtood to mean in the largeſt Senſe, the Superior Temporal Laws and Courts; for they are as well liable to Chancery, as to the Courts of Law, for this Court hath not only a concurrent Juriſdiction with the Eccleſiaſtical Courts, but alſo hath Power to controul them, as my Lord Gilbert's *Reports, and* Chan. Caſ. 201. *ſay, Chancery is Part of the Common Law of the Kingdom. It is the Court of the King's Conſcience of the Law, ſays Lord* Elſmere, *in his Obſervations. Nay, I crave Leave to think as at leaſt one of the Superior Temporal Courts, it is the Office of this Court to bound, limit and reſtrain, the Eccleſiaſtical Courts, as all other inferior Courts, when they but even attempt, either to ſentence or proceed againſt the Rules of Equity and good Conſcience; and not only ſo, but to puniſh their Judges and Officers for Diſobedience to their Injunctions or Orders, or other Contempt of that ſuperior Juriſdiction.*

II. *Particular Inſtances.*

1. THE Common Law is the moſt ancient, general and fundamental Law of the Land; and the Privileges of the Church derive themſelves only from the Indulgence and Favour of Princes. And they had no Foundation in the ancient Common Law, *Ex Gratia Sanctuarii*, and ſome particular Trials that are left to them; and though the Privileges of the Church are confirmed by divers Acts of Parliament, that hinders not, but there was an ancient Common Law in which they had no Bottom. *Hard.* 63.

2. Though

2. Though the Kings of *England* derive their Eccleſiaſtical Laws from others, yet ſo many as were proved, approved and allowed here, by and with a general Conſent, and no others, are aptly, and rightly called the King's Eccleſiaſtical Laws of *England*. 5 *Co. De Jure Regis Eccl.* 9. *a.*

3. If it be demanded, what Canons, Conſtitutions, Ordinances, and Synodals Provincial, are ſtill in Force within this Realm, I anſwer, ſaith Lord *Coke*, That it is reſolved and enacted by Authority of Parliament, that ſuch as have been allowed by general Conſent and Cuſtom within this Realm, and are not contrariant to the Laws, Statutes, and Cuſtoms of the Realm, nor to the Damage, or Hurt of the King's Prerogatives, are ſtill in Force within this Realm, as the King's Eccleſiaſtical Laws of the ſame. Now, as Conſent and Cuſtom hath allowed thoſe Canons, ſo no Doubt, but by the general Conſent of the whole Realm, any of the ſame may be corrected, enlarged, explained, or abrogated: For example, there is a Decree, That all Clerks who have received any Manner of Orders, greater or ſmaller, ſhould be exempt *pro cauſis criminalibus* before Temporal Judges: This Decree, though the Clergy ſtruggled hard for it, had never any Force within *England*; firſt, for that it was never approved and allowed of by general Conſent within this Realm. Secondly, It was againſt the Laws of the Realm, as doth appear by infinite Precedents. Thirdly, It was againſt the Prerogative and Sovereignty of the King, that any Subject, within this Realm, ſhould not

not be ſubject to the Laws of this Realm. *5 Co. De Jure Regis Eccl.* 32. *b.* 33. *a.*

This, ſaith the Margent of 5 *Co. ſupra*, appeareth by the Reſolution of all the Judges in the 7 *H.* 8. *Rot. fo.* 181. and this was long before any Act of Parliament was made againſt foreign Juriſdiction by King *H.* 8.

4. Always when the Pope's Bulls, which are his Patents, or his Councils which are his Statutes, Decrees, or Conſtitutions, croſs the Laws of the Land, they have been rejected, and are, nor never were, any, Laws of this Realm. Where the Pope's Canons were againſt Law they were ſlighted, or neglected, *&c. Pop.* 156, 157.

5. All the Eccleſiaſtical Laws of *England* were not derived or borrowed from the Court of *Rome*; for long before the Canon Law was authoriſed and publiſhed (which was ſince the *Norman* Conqueſt, the ancient Kings of *England*, (*viz.*) *Edgar*, *Athelſton*, *Alfred*, *Edward* the Confeſſor, and others, have, with the Advice of their Clergy, within *England*, made divers Ordinances for the Government of the Church of *England*, and ſince the Conqueſt, ſeveral Provincial Synods have been held, and many Conſtitutions have been made in both the Realms of *England* and *Ireland*; all which are to this Day Part of our *Engliſh* Laws, *vide le Chart. de Will. le Conqueror dat. Anno Dom.* 1066. *irrot.* 2 R. 2. amongſt the Charters *in Archivo Turris London pro Decano & Capitul. Lincoln. Wilhelmus Dei Gratia Rex Anglorum, &c. Sciatis, &c. quod Epiſcopal. Leges, quæ non bene, nec ſecundum Sanctorum Canonum præcepta, uſq; ad mea Tempora in Regno Angliæ fuerunt, Communi conſilio Epiſcoporum meorum, & cæterorum*

orum Epiſcoporum, & omnium Principum Regi mei, emendendas judicavi, &c. See alſo *Girald. Cambren. lib. 2. c. 34.* in the Time of *H. 2.* a Synod of the Clergy of *Ireland* was held in the Caſtle, when and where it was ordained, *Quod omnia Divina, juxta quod Anglicana obſervat Eccleſia, in omnibus partibus Hiberniæ amodo tractentur. Dignum enim & juſtiſſimum eſt ut, ſicut Dominum Regem ex Anglia Divinitus ſortita eſt Hibernia, ſic etiam exinde vivendi formam accipiant meliorem.* Dav. 72. b.

6. It is moſt plain, ſaith Lord *Hale*, That neither the Canon Law, nor the Civil Law, have any Obligation, as Laws, within this Kingdom, upon any Account, that the Popes or Emperors made thoſe Laws, Canons, Reſcripts, or Determinations, or becauſe *Juſtinian* compiled their *Corpus Juris Civilis*, and by his Edicts confirmed and publiſhed the ſame as authentical, or becauſe this or that Council or Pope made thoſe other Canons or Decrees, or becauſe *Gratian*, or *Gregory*, or *Boniface*, or *Clement*, did as much as in them lie, authenticate this or that Body of Canons or Conſtitutions; for the King of *England* does not recognize any foreign Authority, as either ſuperior or equal to him in theſe Kingdoms, or any other theſe his Dominions; neither do any the Popes or Emperors Laws, as ſuch, bind here; but all the Strength which either the Papal or Imperial Laws have obtained in theſe Kingdoms, is only as they have been received and admitted, either by the Conſent of Parliament, and ſo are Part of the Statute Laws of

of the Kingdom, or elſe by immemorial Uſage and Cuſtom, in ſome particular Caſes and Courts, and no otherwiſe; and therefore, ſo far as ſuch Laws are received and allowed here, ſo far they have obtained, and no farther, and the Authority and Force they have here, is not founded on, or derived from themſelves; for ſo they bind no more with us, than our Laws bind in *Rome* or *Italy*, but their Authority is founded meerly on their being admitted and received by us, which alone gives them their authoritative Eſſence, and qualifies their Obligations; and hence it is, that even in thoſe Courts, where the Uſe of thoſe Laws is indulged, according to that Reception which has been allowed them; if they exceed the Bounds of that Reception, by extending themſelves to other Matters than has been allowed them; or if thoſe Courts proceed according to that Law, when controuled by the ſuperior Common Law, the Common Law does and will prohibit and puniſh them; and it will be no ſufficient Anſwer for them, to tell the King's Courts, that *Juſtinian* or Pope *Gregory* have decreed otherwiſe; for we are not bound by their Decrees, further or otherwiſe, than as the Kingdom has, as it were, tranſpoſed the ſame into the Common and Municipal Laws of the Realm, either by Admiſſion of, or enacting the ſame; which is that alone which can make them of any Force in *England*, Ha. Hiſt. Law, 27, 28, 29. *Nay further, the Common Law Courts have Authority, and will prohibit theſe inferior Courts where they interfere and meddle with Matters cogni-*

ſable

able in other inferior Courts, tho' below the Dignity of the Superior Courts to handle, or what they cannot properly determine, as belonging to other particular Juriſdictions, as will, I hope, clearly appear in its proper Place. See Stat. 24 H. 8. c. 12. 25 H. 8. c. 19, 20, 21.

7. That all ſuch Canons as were againſt Law were neglected, appears by the Canon, *Quod nullus capiat Beneficium a Laico*, which notwithſtanding continued long after for Benefices, and does ſtill for Biſhopricks; the Clergy taking them from the King and Lay Hands; ſo there is a Canon for Exemption of Clerks out of Temporal Juriſdiction; yet, as *Brian* ſaith, 10 *H.* 7. 18. it was never obſerved here. So the Canon ſaith, that the Time of Lapſe ſhall be accounted *per Septimanas*; but our Law, not regarding this, ſaith, that it ſhall be accounted *per Menſes* in the Kalendar, as it is expreſly adjudged in 5 *E.* 3. *Rot.* 100. *Clauſ. in Tur.* and the Council of *Lions in Bigamis*, &c. are expounded by Statutes, how they ſhall be taken; ſo that the Pope's Bulls, &c. not allowed of in *England*, are not of Force againſt the Common Law of the Land. *Pop.* 157.

8. Exemption from the Payment of Tithes, *Quamdiu*, &c. is reſtrained to the *Templers*, *Hoſpitalers*, and *Ciſtertians*, by the Decree of *Adrian*, and that Decree was reverſed here; whereby the Law takes Notice of the Diſcharge of the ſaid three Orders. *Poph.* 157.

9. The Juriſdiction, exerciſed in theſe Courts, is derived from the Crown, and the laſt

laſt Devolution is to the King, by Way of Appeal. *Ha. Hiſt. Law* 43.

10. The Eccleſiaſtical Judges derive their Juriſdiction by Parliament, and the Cuſtoms of the Realm, and not from any foreign Power. 2 *Inſt.* 488.

11. The Civil Law, ſaid my Lord Ch. J. only obliges us here as it hath been received. 1 *Pe. Will. Rep.* 52.

12. Though the Canon Law be allowed as the Direction or Rule of their Proceedings *in the Eccleſiaſtical Courts*, yet that is not as if thoſe Laws had any original Obligation in *England*, but only by Virtue of their Admiſſion here, which is evident, as thoſe Canons which have not been received here, do not bind, and alſo for that by ſeveral contrary Cuſtoms and Styles uſed here, many of them are controuled and derogated: And although thoſe Laws are admitted, in ſome Caſes, in thoſe Courts, yet they are but *Leges ſub Graviori Lege*, and the Common Law hath ever retained the Superintendency over them, and thoſe *Signa Superioritatis* before-mentioned, for the Honour of the King, and the Common Laws of *England*. Ha. Hiſt. Law 43.

13. The Eccleſiaſtical Law, which ordained that when a Man is created a Biſhop, that all his inferior Benefices ſhall be void, is often ſaid in the Biſhop of St. *David's* Caſe, 11 *H.* 4. to be the ancient Law of the Land, and 29 *E.* 3. 44. *a.* in the Caſe of the Prebend of *Oxgate*, it is ſaid, that the Conſtitution which ouſted Pluralities might begin in the Court of *Rome*; yet a Church was adjudged void in *Banco Regis*

of that Cauſe; from whence it appears, that after this Conſtitution was received, and allowed in *England*, it was become the Law of *England*; *vide ſtatutum de Bigamis*, 5. where the King, and his Council in Parliament, declared how a Canon made in the Council of *Lions*, ſhould be interpreted and expounded *Quod conſtitutio iſta intelligenda ſit, &c. which varied both from the Words and Intent of the Council.* See *Dav.* 12. *a. b.*

14. By the antient Canons and Decrees of *Rome*, the Iſſue born before the Solemnization of Marriage, Marriage following, is as lawfully inheritable, as the Iſſue born after Marriage, but this was never allowed in *England*; and therefore was never of any Force here. 5 *Co. De Jure Regis Eccl.* 11. *b.* and though all the Biſhops, earneſtly and in moſt preſſing Terms inſtanced the Lords to conſent that all ſuch as were born before Marriage ſhould be legitimate, as well as thoſe born within Marriage, as to the Succeſſion of Inheritances; foraſmuch as the Church accepteth ſuch to be legitimate, all the Earls and Barons, *una voce*, anſwered, *Nolumus Leges Angliæ mutare, quæ hucuſque uſitatæ ſunt & approbatæ.* 5 Co. De Jure Regis Eccl. 11. b. 12. a.

15. The Spiritual Courts are inferior Courts. 1 *Chan. Caſ.* 203. *Nelſ.* 434.

16. The Eccleſiaſtical Courts have their Force from the Common Law; and their Juriſdiction is founded upon the ſame *Engliſh* Law, with the Temporal Courts Juriſdiction. *Show. Parl. Caſes* 99.

17. Though

17. Though the Common or Municipal Laws of *England* have, in ſome Meaſure, allow'd, theſe the Eccleſiaſtical Courts, the Canon and Civil Law, as the Rule or Direction of their Proceedings or Deciſions; yet even here the Common Law has retained theſe *Signa Superioritatis*, and the Preference and Superintendency of thoſe Courts. And firſt, As the Laws and Statutes of the Realm have preſcribed thoſe Courts their Bounds and Limits; ſo the Courts of Common Law have the Superintendency over thoſe Courts, to keep them within the Limits, and Bounds of their ſeveral Juriſdictions; and to judge and determine, whether they have exceeded thoſe Bonds or not; and in Caſe they do exceed them, the Courts at Law iſſue their Prohibitions to reſtrain them, directed either to the Judge or Party, or both, and alſo in Caſe they exceed their Juriſdiction, the Officer who executes their Sentences, and the Judges who give them, are puniſhable in the Courts at Common Law, at the Suit of the King, or at the Suit of the Party, and ſometimes at the Suit of both; according to the Variety and Circumſtances of the Caſe. *Ha. Hiſt. Law* 41, 42. *Doct. & Stud. lib.* 2. *c.* 28, 29.

18. Though theſe, Eccleſiaſticks, are *Judices Ordinarii*, and have Eccleſiaſtical Juriſdiction annexed to their Eccleſiaſtical Offices; yet this Juriſdiction Eccleſiaſtical *in foro exteriori* is derived from the Crown of *England*, for there is no external Juriſdiction, whether Eccleſiaſtical or Civil, within this Realm, but what is derived from the Crown. It is true both anciently

and at this Day, the Proceſs of the Eccleſiaſtical Courts runs in the Name of the Biſhop, and iſſues under his Seal, and the Practice ſtands ſo; but that is by ſeveral Acts of Parliament; and therefore can be no Impediment of their Deriving their Juriſdiction from the Crown. Till 27 *H.* 8. *cap.* 4. the Proceſſes in the Counties Palatine run in the Names of the Counts Palatine; yet no Man ever doubted, but that the Palatine Juriſdiction was derived from the Crown. *Ha. Hiſt. Law* 29, 30, 31.

19. It is ſaid 11 *H.* 4. That the Pope cannot alter the Law of *England*, and this is evident; for in all Caſes where the Bulls, or Conſtitutions of the Pope, croſs the Law of the Land, they have always been rejected. *Poph.* 156, 157. See the Book particular Inſtances, and them of four Sorts, in Bulls of, 1. Proviſion, 2. Citation, 3. Exemption, 4. Excommunication. Where the Pope's Canons were againſt Law, they were ſlighted or neglected. *Poph.* 156.

20. Though all matrimonial Cauſes have been long determinable in the Eccleſiaſtical Courts, and are more properly within the Cognizance and Juriſdiction of the Clergy; yet *ab initio non fuit ſic*; for as well Cauſes of Matrimony, as Cauſes Teſtamentary, were Civil Cauſes, and belonged to the Juriſdiction of the Civil Magiſtrate, till the Chriſtian Emperors and Kings, to honour Prelates, granted or allowed them Cognizance and Juriſdiction in theſe Caſes. *Dav.* 51. *b.*

21. Canons do not bind here, but as they are received and allowed, but when ſo allow-

ed, they are as Parcel of our Law, as in *Cawdry*'s Case, 5 *Co.* and Dr. *Hussey*'s Case 7 *Hen.* 8. *Kellow* ——— *Palm.* 469.

22. The Canon, That Infants born before Marriage are legitimate, doth not bind here; as appears by the Statute of *Merton*, *Nolumus Angliæ Leges mutarè*, and yet this is a Canon of the Church; as appears by *Littleton* in his Case of Bastard eigne. *Palm.* 469.

23. The Council of *Lions*, *de Bigamis*, was received in *England*, and is according to Law; and there are some Canons which are not received as that which ousts Battel in a Writ of Right. The Canon of *Lateran* is received, as appears by the 29 *E.* 3. 44. 10 *E.* 3. 1. accordant 9 *E.* 3. 22. *Palm.* 470.

24. No Canon Ecclesiastical can be made, or executed, without the Royal Assent. *Vaug.* 329.

25. Ecclesiastical Decretals of their own Authority bind not in this Realm. *Doct. & Stud. lib.* 2. *c.* 26. *fo.* 110. *a.* 112. *a.*

3. *Who bound thereby.*

1. IF a Man hath a Calling, as a Schoolmaster, *&c.* which any Lay-man might follow, by the Common Law, no Canon can restrain him of the Liberty the Law gave him; for the Common Law, or Custom of the Realm cannot be abrogated but by Act of Parliament; and therefore a Canon cannot possibly do it though ordained

ed by the King's Royal Licence, and after affirmed by his Royal Authority. 12 *Co.* 72. *Vide* 2 *Inſt.* 94, 647, 653, 657. *Roll. Abr.* 454. *Mo.* 782. *Ratio eſt*, becauſe being a Lay-man, he is not repreſented; and therefore his Conſent is not given, and a Man cannot be under the Obligation of a Canon without his Conſent expreſſed or implied. In the primitive Church the Laity were preſent at all Synods. When the Empire became Chriſtian, no Canon was ever attempted without the Emperor's Conſent, and his Concurrence included the Aſſent of the whole Body of the People; becauſe he had the ſole legiſlative Power in him: But this is not the Caſe of our King; for he has not the whole legiſlative Power in him, *ergo* his Conſent in *Re Eccleſiaſtica* makes it a Law to bind the Clergy, but not the Laity. *Salk.* 673. *Vide* 20 *H.* 6. 13. *Bro. Abr. Ordinary* 1. 2 *Ro. Abr.* 226. 2 *Cro.* 670. 2 *Brownl.* 38. *Cro. Car.* 588. *Palm.* 379. *And note*; *the King is not bound by any Canon*; *becauſe, even an Act of Parliament, which is of ſo much greater Authority binds him not, unleſs expreſly named. The Reaſon why the Clergy are bound in Re Eccleſiaſtica* is, becauſe they are either Parties in Perſon, or by Repreſentation, 12 *Co.* 72. but they are not bound thereby in Temporal Matters. 12 *Co.* 72. *As Heads of Colleges and Hoſpitals, Clerks of Impropriations, Donatives, Chapels, &c.* Canons cannot alter the Law. 2 *Vent.* 42. They can bind none but the Clergy. *Mo.* 755. For the Laity have no Repreſentatives in Convocation, 2 *Ven.* 42. and the

King's Affirmance does not help the Matter. *Salk.* 2 *Vent.* 43.

2. It was reſolved by Lord Chancellor, the two Lord Chief Juſtices, and Lord Chief Baron, that the Canons of the Church made by the Convocation and the King, *ſans* Parliament, bind in Eccleſiaſtical Matters as well as an Act of Parliament; for they ſaid, that by the Common Law, (*ſo that it is the Common Law which gives the Canons their Force*) *as in the Books is after ſaid, and particularly by Lord Chief Juſtice* Hale, *Sir* John Davis, *and Mr. Serjeant* Hardreſs, *&c.* every Biſhop in his Dioceſe, Arch-Biſhop in his Province, and Convocation Houſe in the Nation, may make Canons to bind within their Limits; and ſo when the Convocation make Canons of Matters belonging to themſelves, and the King hath confirmed ſuch Canons, they ſhall bind the whole Realm; and ſo was decreed in Chancery in the principal Caſe. *Moor fo.* 781, 782, 783. *Qu. de hoc.*

3. A Prohibition was granted, where the Commiſſary at his Viſitation cited ſeveral Men of ſeveral Pariſhes to appear before him there, and for not appearing they were excommunicate. Prohibition granted, for that the Ordinary hath not Power to cite any to that Court, but the Church-wardens and Sideſmen, and theſe he may impanel and give Articles to for to inquire, as the Juſtices of Aſſiſe. *Noy* 123.

4. Eccleſiaſtical Perſons are ſubject to the Canons. *Biſhop of* St. David's *Caſe in* Salk.

5. The Canons bind only Eccleſiaſticks, and do not bind the Laity; becauſe they are

re made only by the Clergy in Convocation; and ſo they are only bound by the Rules of the Common Law; and Laymen are not bound; becauſe ſuch Canons have not the Aſſent of the Commons and the Temporal Lords. *Gilb.* 160.

6. The Eccleſiaſtical Canons do not bind a Layman (as was the principal Caſe) who was libelled againſt for not taking a Licence from the Ordinary, and had a Prohibition; and the Reaſon there given, wherefore the Laity were not bound, was that fundamental Maxim of our Government, That what bound all muſt be aſſented to by all; and as to the Canons, they were not made with the Aſſent of the Laity; for that the Laity are not repreſented in Convocation, ſo cannot be bound by their Acts, without Act of Parliament. 1 *Peer Will. fo.* 29, 30, 31, 32. *Moor* 755.

7. The Canons bind the Clergy, but not the Laity. The Clergy are only bound thereby in *Re Eccleſiaſtica*, and not otherwiſe. No Canons bind the Clergy unleſs confirmed by Act of Parliament, but in Eccleſiaſtical Matters. *The King* and *The Biſhop of* Litchfield *and* Coventry, *Mich.* 7 *Geo.* 2. *B. R.* See the Caſe of *Dodridge* v. —— *& al'*, *Hill.* 2 *Geo.* 2. *B. R.* under Title *School-Maſters.*

8. *Stoughton* and *Dr. Reynold's* Caſe, 10 *Geo.* 2. *B. R.* The Canon of 1603, which gives Direction about the Choice and Duty of Church-wardens, does not bind the Laity; but is ſubject to Controul by the Cuſtom of particular Pariſhes, as is *Cro. Jac.* 532. *Cro. Car.* 551, 670. 2 *Rol. Abr.* 287. *Hard.* 378. *Carth.* 118, *&c.*

III. *Eccleſiaſtical Courts.*

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A. General to all such Courts.

I. What they are, their Dependance, and of what they have Jurisdiction in general, and how they are to proceed.

1. AND first these are Courts, as hath been more at large shewn already, which derive their Existence and Being from the Favour and Indulgence of Princes and the Acceptance of Countries, for the Gracing of such Ecclesiastical Persons as were set over the Church by and under

nder ſuch Princes, and in ſuch Countries where he ſame were ſo allowed and received; and articularly in theſe Kingdoms they owe their Juriſdiction to the Favour and Condeſcenſion of ur Sovereigns, and the Receptiom of the Peo-le, and are not derived from any inherent Au-hority in the Church, or the Prelates, or other ſubordinate Governors thereof; and therefore it is, that thoſe who are thus impowered have been held as diſobedient and rebellious, when they have, inſtead of a modeſt Exerciſe of this Au-hority and Juriſdiction within the Limits of ſuch Delegation, either pretended a Divine Right thereto, or uſurped upon the Temporal Juriſdiction againſt the Laws of Gratitude, and their known Duty to their Royal Benefactor and the Laws of their Country.

2. All the Courts Eccleſiaſtical are but as one Court, as to the King's Courts. *Palm.* 418.

3. *Jura Eccleſiaſtica ſunt limitata.* Salk. 553.

4. The Matters of Eccleſiaſtical Juriſdiction are of two Kinds, Criminal and Civil. *Hale's Hiſt. Law* 31.

5. The Criminal Proceedings extend to ſuch Crimes as by the Laws of this Kingdom are of Eccleſiaſtical Cognizance, as Hereſy, Fornication, Adultery, and ſome others, wherein their Proceedings are *pro reformatione morum & pro ſalute animæ*; and the Reaſon why they have Cognizance of thoſe, and not of others, as Murder, Theft, Burglary, *&c.* is not ſo much from the Nature of the Offence; for ſurely one is as much a Sin as the other; and therefore if their Cognizance were of Offences *quatenus peccata*

peccata contra Deum, it ſhould extend to all Sins whatſoever, they being againſt God's Law; but the true Reaſon is, becauſe the Law of the Land hath indulged unto that Juriſdiction the Cognizance of ſome Crimes, and not of others. *Hale's Hiſt. Law* 31. 12 *Co.* 44.

6. The Civil Cauſes committed to their Cognizance, wherein the Proceedings are *ad inſtantiam partis*, ordinarily are Matters of Tithes, Rights of Inſtitution and Induction, Matrimonial Caſes and Divorces, Teſtamentary Cauſes and their Incidents, as Inſinuation or Probation of Teſtaments, Controverſies concerning the ſame, and of perſonal Legacies, or Bequeſts, *&c.* *Hale's Hiſt. Law* 31.

7. Wrongs or Injuries of Eccleſiaſtical Cognizance are either Criminal or Civil; thoſe Criminal of Eccleſiaſtical Cognizance are ſuch as are publick Scandals and Offences wherein the Judges Eccleſiaſtical proceed; either firſt at the Promotion or Proſecution of ſome Perſon; or 2dly, *Ex officio, & pro ſalute animæ*, as in Caſes of Adultery, Fornication, Inceſt, Profanation of Sacred Things, or Times, or Places, Blaſphemy, Hereſy, *&c.* Wrongs Civil, of Eccleſiaſtical Cognizance, are Defamation, Tithes, their Right, Subſtraction, *&c.* Oblations, Mortuaries, Penſions, Cauſes of Spoliation, Matters Matrimonial and Divorce, Wills or Teſtaments, Adminiſtrations, *&c.* *Hale's Hiſt. Law* 98.

8. The Cauſes of Eccleſiaſtical Cognizance, ſays Lord *Coke*, are Blaſphemy, Apoſtacy, Hereſy, Schiſm, Ordering, Admiſſion, Inſtitution of Clerks, Celebration of Divine

Divine Service, Rights of Matrimony, Divorces, general Baſtardy, Subſtraction and Right of Tithes, Oblations, Obventions, Dilapidations, Reparations of Churches, Probate of Teſtaments, Adminiſtrations and Accounts upon the ſame, Simony, Inceſts, Fornications, Adulteries, Solicitation of Chaſtity, Promotions, Procurations, Appeals in Eccleſiaſtical Cauſes, Commutations of Penance, and ſome others, are to be heard and decided by Eccleſiaſtical Judges; *but that*, according to the King's Eccleſiaſtical Laws of this Realm. 5 *Co. De Jure Regis Eccl.* 9. *a.*

9. The Determination of Hereſies, Schiſms, Errors in Religion, ordering Examination, Admiſſion, Inſtitution, and Deprivation of Men of the Church, Right of Matrimony, Divorces, and general Baſtardy, Probate of Teſtaments, Letters of Adminiſtration, Mortuaries, Penſions, Procurations, Reparations of Churches, Simony, Inceſt, Adultery, Fornication and Incontinency, and ſome others, belonging to the Eccleſiaſtical Courts. 5 *Co. De Jure Regis Eccl.* 40. *a. b.*

10. The Eccleſiaſtical Courts may follow their own Rules concerning Things which are originally in their Cognizance; but if any collateral Matter doth ariſe, as concerning the Revocation of a Will, or Payment of a Legacy, if the Proof be by one Witneſs they ought to allow it. 3 *Mod.* 268. *Telv.* 188.

11. By the *Stat.* 1 *Eliz.* nothing is reſtored or united to the Eccleſiaſtical Juriſdiction, only the Viſitation of Eccleſiaſtical States

States and Perſons, and the Reformation of the ſame, and of all Errors, Hereſies, Schiſms, Abuſes, Offences, Contempts and Enormities, which be Criminal. 4 *Inſt.* 326.

12. *Dodderidge* Juſtice: Courts Chriſtian have Cognizance of a Legacy, and therefore may well try Fully adminiſtred *per teſtes*; they have the Cognizance of the Legacy, and therefore of the Plea concerning *Plein-ment adminiſt'*. 3 Bulſt. 315. Palm. 416, 422. Latch 67.

Tempore E. 2. Albeit by the Ordinance of *Circumſpecte agatis* made 13 *E.* 1. and by general Allowance and Uſage, the Eccleſiaſtical Courts held Plea of Tithes, Obventions, Oblations, Mortuaries, Redemptions of Penance, Laying of violent Hands upon a Clerk, Defamations, *&c.* yet did not the Clergy *(as is worth noting)* think themſelves aſſured, nor quit from Prohibitions purchaſed by Subjects, till *E.* 2. by Letters Patent under the Great Seal, in and by Conſent of Parliament, on the Petitions of the Clergy, had granted to them Juriſdiction in theſe Caſes. 5 *Co. De Jure Regis Eccl.*

13. Eccleſiaſtical Perſons not to be vexed for holding Plea of Matters within their Cognizance. *Stat.* 1 *R.* 2. 13.

II. *Wherefore denominated Spiritual.*

1. ALL Cauſes, whereof Eccleſiaſtical, or Spiritual, Perſons, (*as they affect to call themſelves Divine, or Spiritual, Perſons*, &c.) have Cognizance or Juriſdiction, tho' they are merely by the Grant, or Permiſſion of Princes, are from and by ſuch Spiritual Perſons called Spiritual Cauſes; and as all ſuch Cauſes are called Spiritual Cauſes, ſo the Courts, where theſe Spiritual Cauſes are determinable, are called Spiritual Courts; but the Matter about which they exerciſe their Juriſdiction is Temporal and Carnal. *Dav.* 97,

97, 98. *Vue tout le caſe excellent matter des ces perſons, &c.*

III. *The Sorts.*

1. THeir Courts are of two Sorts. The firſt are ſuch as are derived immediately by the King's Commiſſion, ſuch as the High Commiſſion Court formerly was, (5 *Co. Cawdry's* Caſe). 2*dly*, Such as are not derived by immediate Commiſſion from the Crown, but the Laws of *England* themſelves have annexed to particular Offices, as incident to ſuch Offices. Thus it is, that every Biſhop, by his Election and Confirmation, even before Conſecration, had Eccleſiaſtical Juriſdiction in Virtue of his Office, and as thereunto annexed by the Favour and Indulgence of the Common Law, as *Judex Ordinarius* within his Dioceſe: And anciently ſeveral Abbots and moſt Arch-deacons to this Day, by Uſage and Allowance of the *Superior* Common Law, exerciſe the like Juriſdiction within their particular Archdeaconries, or other Limits or Precincts, *&c. Vide Hale's Hiſt. Law* 29, 30, 31.

IV. *Where to be kept.*

1. ALL Chancellors, Commiſſaries, Archdeacons, Officials, and all others exerciſing Eccleſiaſtical Juriſdiction, ſhall appoint ſuch meet Places for the keeping of their Courts, by the Aſſignment or Approbation of their Biſhops, as ſhall be convenient

nient for Entertainment of thoſe that are to appear there and moſt indifferent for their Travel. And likewiſe they ſhall keep and end their Courts in ſuch convenient Time, as every Man return howewards in as due Seaſon as may be. *Canon* 125.

V. *The Proceſs.*

1. THEIR Proceſs runs in the Name of the Biſhop, and iſſues under his Seal, and this by ſeveral Acts of Parliament. *Hale's Hiſt. Law* 30, 31. Vide antea *From whence they derive their Authority from the Superior Common Law.* Caſe 4. *But this is no Sort of Argument that they are not the King's Courts,* &c.

VI. *The Proceedings.*

1. *Rules in.*

1. THE Rule by which they proceed is the Canon Law; but not in its full Latitude, but only ſo far as it ſtands uncorrected either by contrary Acts of Parliament, or the Common Law and Cuſtom of *England*; for there are many Canons made in ancient Times, and Popes Decretals, that never were admitted here in *England*, and particularly in Relation to Tithes, many Things being by our Laws privileged from Tithes, which by the Canon Law are tithable, as Timber, Oar, Coals, &c. without a ſpecial Cuſtom ſubjecting them thereto. *Hale's Hiſt. Law* 32.

2. Evidence in Court Chriſtian is none at Law; nor any Inducement to a Jury. *Yelv.* 92.

3. The Probate of a Will in the Spiritual Court is no Evidence at Law for the Lands. *Hard.* 313.

4. The Probate of a Will is no Evidence in a Litigation for Lands, either *pro* or *con.* in any Court of Law, but a Proceeding *coram non judice*; yet is good as to Goods. *Salk.* 552, 553.

5. No Biſhop, Chancellor, Archdeacon, Official, or other Eccleſiaſtical Judge, ſhall ſuffer any general Proceſſes of *Quor' nomina* to be ſent out of his Court, except the Names of all ſuch as thereby are to be cited ſhall be firſt expreſly entered by the Hand of the Regiſter, or his Deputy under the ſaid Proceſſes, and the ſaid Proceſſes and Names be firſt ſubſcribed by the Judge or his Deputy, and his Seal thereto affixed. *Can.* 120.

VII. *The End of Suits there.*

1. IN the Spiritual Court their Proceedings and Ends are Spiritual, *pro ſalute animæ*, and to reform the inward Man. 5 *Co. De jure Regis Eccl.* 6. *a.*

2. Excommunication is the extreme and final End of all Suits in the Court of *Rome*, &c. 5 *Co. De Jure Regis Eccl.* 15. *b.*

3. In all Cauſes depending between Party and Party in Court Chriſtian, where the Suit is only *pro ſalute animæ, vel reformatione morum*, the King's Pardon is a Bar thereto; for

for that it is not to recover Damages; but only to inflict a Punishment upon the Offender *pro salute animæ*. 5 Co. Part 2. 51. a. Vide Hob. 81. 2 Cro. 335. 1 Cro. 9, 47, 68, 199.

VIII. *The Sentences.*

1. *How executed.*

1. *General.*
2. ~~*Here of Excommunication.*~~

THE Coertion or Execution of the Sentence in Ecclesiastical Courts is only by Excommunication of the Person contumacious; and upon Signification thereof into Chancery, a Writ *de Excommunicato capiendo* issues, whereby the Party is imprisoned till Obedience yielded to the Sentence. But besides this Coertion, the Sentences of the Ecclesiastical Courts touching some Matters do introduce a real Effect, without any other Execution, as a Divorce *a Vinculo Matrimonii* induces a legal Dissolution of the Marriage; so a Sentence of Deprivation from an Ecclesiastical Benefice does by Virtue of the very Sentence, without any other Coertion or Execution, introduce a full Determination of the Interest of the Person deprived. *Hale's Hist. Law* 33, 34.

2. Of

2. Of Excommunication.

1. *What, the Sorts, and the Writs conſequential thereof.*

1. EXcommunication, *Excommunicatio*, is a Cenſure inflicted by the Canon or Eccleſiaſtical Judge depriving the Perſon offending from the lawful Communion of the Sacraments, and ſometimes from the Liberty of even converſing with the Faithful; and is divided *in majorem, & minorem*; *Minor eſt, per quam quis a Sacramentorum participatione conſcientia vel Sententia arcetur. Major, quæ non ſolum a Sacramentorum, verum etiam fidelium Communione excludit, & ab omni*

Father *Paul* in his Right of Sovereigns, deſcribes Excommunication to be an Act derogatory from the Contract made by a Chriſtian at his Baptiſm, as to his Part and Portion of all Spiritual Gifts; and is a Puniſhment by which the Ordinary ſeparates one from the Body of the Church, by depriving him of all Spiritual Benefits, and renders him unworthy to partake of the Sacraments, inſomuch that though he ſhould be confeſſed and abſolved from his Sins, yet the Abſolution would ſignify nothing till he is alſo abſolved from the Excommunication; the Father ſays alſo, that Excommunication is not Sin, but it is Puniſhment; and can only take place where there is Sin, and that committed too after Excommunication threatened; for there are, ſays he, an infinite Number of very enormous Sins which are not ſubject to Excommunication; and for theſe Reaſons he thinks that the Church, (but our Comfort is he is only to be underſtood of the Church of *Rome*) by fulminating Excommunication, uſes ſuch Severity, that ſhe ſeems to have forgot that Chriſtian Compaſſion which ſhe commonly ſhews at other Times; for he obſerves indeed, that ſhe prays for all Sinners, even thoſe who are out of her Pale, as well *Jews* as *Pagans*, but makes no Mention of Perſons excommunicate, as though ſhe had quite ſuſpended all Deſire of their Salvation, whilſt under this Cenſure; and he farther obſerves, that though the Church prays for Hereticks and Schiſmaticks, who have incurred Excommunication, yet ſhe does not pray for them as excommunicated Perſons; and yet, as the Father ſays, Excommunication ought to have ſome deadly Sin for its Object, elſe the whole Structure of it falls to the Ground; and even where there is Cauſe,

yet even there he holds clearly, that Care ought to be taken to meaſure the Crime by the true Intereſt of the Church, and not by that of the Clergy; *for that there is an eſſential Difference between the Church and the Clergy:* *ni actu legitimo ſeparat & dividit. Venatorius de Sent. Excom.* Thus antiently, *Auctoritate Dei Patris omnipotentis, & Filii, & ſpiritus Sancti, & beatæ Dei Genetricis* Mariæ, *omniumq Sanctorum, Excommunicamus, Anathematizamus, & a limitibus Sanctæ Matris Eccleſiæ ſequeſtramus illos Malefactores, N. conſcutanceos quoque & participes; & niſi reſipuerint, & ad ſatisfactionem venerint, ſic extinguatur lucerna eorum ante viventem, in Secula Seculorum. Fiat, fiat. Amen.* Ex Emendat' Legum *Will.* Conqueſtor' in lib. vocat. *Textus Roffenſis.* Blount's Law Dict. ſub hoc Tit.

And though Aſtertimes have introduced the Uſe of Excommunication, yet, as he informs us, it was only uſed in Caſes of the laſt Importance; and to be ſure there ought to be a Proportion between the Crime and the Puniſhment. *And if theſe Things are thus, I muſt ſubmit it, that the Father's Obſervations are well worthy the Clergy's Notice and cloſe Attention, namely, that brotherly Correction is more effectual than the Sword of Juſtice to bring back thoſe who have gone aſtray; and that good Examples reform more than all Puniſhments; and that* magis movent exempla quam verba.

As to the Sorts, he agrees them to be two, the Major and the Minor; the firſt of which he deſcribes to be, that which is fulminated immediately againſt the Criminal, and the other that which one falls under for aſſociating or converſing with Perſons excommunicate; and both he ſays are alike deprived of the Spiritual Benefits of the Church, and cut off from her Body; with this Diſtinction, that he under the Major feels the Pains thereof in his own Perſon; and not only ſo, but where he is known, his Preſence is ſufficient to hinder the Functions of other Believers; ſo that if ſuch an one enters into a Church, the Divine Offices muſt be ſtayed; which is more, as our Author obſerves, than is done at the Approach of one poſſeſſed with a Devil.

2. *Excommunicatio eſt Traditio Diabolica.* Poph. 140.

3. There are theſe ſeveral Writs conſequential of an Excommunication, namely, an *Excom. Ca.* which is a Writ directed to the Sheriff for apprehending him who ſtands obſti-

bſtinately excommunicated forty Days, for his Contempt in not ſeeking Abſolution, it may be certified into Chancery, whence this Writ iſſueth for the laying him up without Bail or Mainprize, until he conform himſelf. *Blo. Law Dict.* tit. *Excom. Vide Fitzh. Nat. Brev.* 62. *Anno* 5 *Eliz. cap.* 23. *& Reg. fo.* 65. *Excom. deliberando*, which is a Writ alſo to the Sheriff for Delivery of an excommunicate Perſon out of Priſon, upon Certificate of the Ordinary of his Conformity to the Eccleſiaſtical Juriſdiction. *Blo. Law Dict. Vide Fitzh. Nat. Br.* 63. *Reg.* 67. *Excom. recipiend.* is a Writ where Perſons excommunicate being for their Obſtinacy committed to priſon, and unlawfully delivered thence before they have given Caution to obey the Authority of the Church, are commanded to be ſought for and laid up again. *Blo. Law Dict. Vide Reg.* 67.

2. *By whom to be, and whether good, or void.*

1. *General.*

1. Excommunication for Contumacy ought to be for a Contempt, whereof the Principal Matter of the Suit commenced before the Biſhop who excommunicated the Party. 14 *H.* 4. 14.

2. A Man ſhall not be diſabled by Excommunication, unleſs excommunicated by ſome Biſhop of this Realm; and an Excom-

munication by the Pope himſelf is ineffectual to diſable any one. 14 *H.* 4. 14.

3. Excommunication before the Pope no Impediment. *Fitzh. Abr. Excom.* 21.

4. Excommunication made by the Pope is of no Force here, and being certified by him into any Court here ought not to be received or allowed; neither is any Certificate of Excommunication available in Law, but what is made by ſome Biſhop here in *England*; for the Biſhops are by the Common Law the immediate Officers and Miniſters of Juſtice to the King's Courts in Cauſes Eccleſiaſtical. 5 *Co. De Jure Regis Eccl.* 23. *b.*

This ſufficiently demonſtrates the Inferiority of theſe Courts, theſe Judges being but Miniſters of Juſtice to the King's Courts.

5. No Excommunication ſhall diſable but of ſome Biſhop within the Realm. *Fitzh. Abr. Excom.* 21. and if a Man be excommunicated for Matter not cognizable there or againſt Law, he ſhall have a Writ out of Chancery *commanding* the Biſhop to abſoil him, and if he does not do it, his Temporalties ſhall be ſeiſed. *Fitzh. Abr. Excom.* 21.

* 6. *Mich.* 7 *Geo.* 2. *Banco Regis*, *The King* verſus *Letter.* In a Writ of *Excom. Cap.* the *Significavit* ſet out, That the Defendant was excommunicated for not appearing to anſwer Interrogatories to be exhibited againſt him *ex Officio* for the Health of his Soul, and Reformation of his Manners. Mr. *Ketelbey* moved the Writ might be quaſhed. 1ſt, Becauſe the Defendant's Name had no Addition to it, which the Stat. of *Eliz* requires. 2dly, Becauſe the Offence mentioned in this *Significavit* is not one

one of thoſe mentioned in the Statute. 3dly, Becauſe the Interrogatories were not then exhibited, and perhaps, as he ſaid, never would. The Lord Chief Juſtice ſaid, he did agree, that if this Excommunication had been after Sentence, the *Significavit* muſt have ſet forth the Cauſe, for which he was excommunicated; and therefore where a *Significavit* has ſet forth that the Defendant was excommunicated for not paying of Tithes, *ſive alia Jura Eccleſiaſtica*, it has been held to be bad; but as this was an Excommunication for the Party's not appearing he thought it good enough. However, a Rule was made to ſhew Cauſe (abſent *Lee* Juſt.). Afterwards, *eodem Termino* (as I was informed) Mr. *Fazakerly*, on ſhewing Cauſe, urged the ſame Reaſon as his Lordſhip had before-mentioned, and accordingly the Rule was diſcharged.

2. *Where void for Incertainty.*

1. *Beaumont* was taken upon an *Excom. Cap.* and the *Significavit* does not mention that he was commorant within the Dioceſe of the Biſhop at the Time of the Excommunication; and it was adjudged for this to be uncertain, and the Party diſcharged. *Mo. fo.* 467, 468.

2. In the King's Bench Excommunication was pleaded in Bar to the Taking of an Inqueſt at Bar, and the Certificate of the Biſhop of *Landaff* ſhewn, without mentioning in it by what Biſhop he was excommunicated; wherefore the Certificate was ruled

void. And the Abſolution of the Archbiſhop was ſhewn; but the Court took that to be inſufficient; becauſe it ought to be by the ſame Biſhop, unleſs it be by Appeal. *Mo. Jo.* 775. *Caſe* 1071.

* 3. *Hill.* 6 *Geo.* 2. *Banco Regis*, *Anonymus.* Mr. *Strange* moved to quaſh a Writ of *Excom. Cap.* for Incertainty in it, the Excommunication being laid to be *in Cauſa Defamationis, ſive Convitii*; accordingly a Rule was made to ſhew Cauſe; *ex Relatu.*

* 4. *Trin.* 6 *Geo.* 2. *Banco Regis*, *Anonymus.* Mr. *Ketelbey* moved to quaſh a Writ of *Excom. Cap.* for Incertainty; the Sentence againſt the Defendant being ſet out to be in a Cauſe of Slander or Defamation; he ſaid, he remembered Mr. *Strange* obtained a Rule for quaſhing ſuch a Writ *in Cauſa Convitii, ſive Defamationis.* The direct Tranſlation of the Word, *Convitium*, he took to be Slander, and therefore he ſubmitted it, that that Caſe was directly in Point with the preſent one. *Lee* Juſtice ſaid, he remembred when Mr. *Strange* made the Motion, he cited a Book which ſhewed, that the Word, *Convitium*, in the Civil Law Senſe of it, ſignified a different Matter from the Word *Defamatio*; therefore in that Caſe there was a plain Incertainty; but in the preſent Caſe the Court was of Opinion, that a Charge of Slander and a Charge of Defamation ſignified exactly the ſame Thing; wherefore Motion rejected.

3. *The*

3. *The Writ of* Excom. Cap.

1. *How one to be charged therewith.*

1. *When in Cuſtody.*

1. MICH. 4 *Geo.* 2. *in Banco Regis*, * *The King* and *Strudwick*. Upon a Return to an *Habeas Corpus* directed to the *Warden of the Fleet*, that the Priſoner was *Languidus*, Mr. *Peer Williams* produced two Affidavits from Apothecaries, ſworn the Day of the Motion, that the Priſoner might ſafely be brought up; and therefore moved for another *Habeas Corpus*, returnable *immediate*, *licet languidus*, in order that he might be charged in Cuſtody with an *Excom. Cap.* Mr. *Yates* on the other Side produced an Affidavit, ſworn the Day before, that the Priſoner's Life would be in Danger, if he was brought up. The Court ſaid that this Affidavit was by no Means of ſo much Weight, as the other Two; and therefore granted the Motion; upon which he was immediately brought up, and the *Excom. Cap.* was read, directed to the Sheriff of *London*; and thereupon the Court ſaid he muſt be committed to *Newgate*; for that is the Sheriff of *London*'s Priſon; but then an *Habeas Corpus* was produced out of the Common Pleas to charge him with Actions in that Court; ſo that he was remanded thither.

2. *How one taken thereupon is to come into the King's Bench.*

1. *Per Cur'*. One taken on a Writ of *Excom. Cap.* cannot come into the King's Bench but by *Habeas Corpus*. *Watſon*, Biſhop of St. *David's* Caſe in *Salk*. *Vide Fitz.* 56, 117.

2. If one taken on an *Excom. Cap.* be brought in before the Writ returnable, he ſhall not be allowed to plead to quaſh the Writ. *Watſon*, Biſhop of St. *David's* in *Salk.*

4. *Who to certify; how, and the Effect thereof.*

1. HANK. ſaid, it was found in the Books in the Time of *W. Herle*, That every Official and Commiſſary to Biſhops might certify *Excom.* into the King's Courts; but for the preventing the miſchievous Conſequences it was that none but Biſhops ſhould do it; and this is now the Uſe. *Fitzh. Abr. Excom.* 20. *Vide* by whom to be.

2. The Biſhop's Certificate of *Excom.* only available againſt the Plaintiff in the Court to which the Biſhop certifieth. *Fitzh. Abr. Excom.* 15.

3. Letter of Certificate muſt be under the Seal of the Ordinary, and not of his Commiſſary, *&c. Fitzh. Abr. Excom.* 11.

4. Who a Biſhop to certify. *Palm.* 474

5. *By*

5. *By whom to be ſhewn.*

1. THE Defendant ſhews the Pope's Bull that the Plaintiff was excommunicated, and demanded Judgment, if, &c. *Sed non allocatur*; for he hath not ſhewn the Biſhop's Certificate, &c. *Fitzh. Abr. Excom.* 10.

2. In Treſpaſs againſt a Biſhop and others the Biſhop may not ſhew his own Excommunication againſt the Plaintiff; for a Man is not to be Judge in his own Cauſe. *Fitzh. Abr.* Tit. *Excommengement*, Caſe 1, 2, 9. So of the Archbiſhop, Caſe 3.

6. *Where the Ordinary is bound to aſſoil the Excommunicate, and the Conſequence of his Diſobedience.*

1. *Where the Excommunication is againſt Law, or the Command of the King's Courts.*

1. IF a Biſhop excommunicate for a Cauſe not belonging to him, the King may write to the Biſhop to command him to aſſoil and abſolve the Party. *5 Co. De Jure Regis Eccl.* 23. *b.*

2. If a Man be excommunicated by the Biſhop againſt our Law, he ſhall have a Writ out of the Chancery, directed to the Biſhop, commanding him to aſſoil him; and if

if he will not aſſoil him, his Temporalties ſhall be ſeiſed, &c. 14 *H.* 4. 14.

3. Where one is excommunicate by Force of the King's Writ *de Excom. Cap.* if the Biſhop upon the King's Writ *de Cautione admittenda* do not deliver him, then on the Biſhop's Refuſal, a Writ ſhall go out of the Chancery to the Sheriff; or if the Excommunication be unjuſt, as for a Matter which belongs not to their Cognizance, and he be taken by Force of the King's Writ; then the Party grieved ſhall have this Writ out of Chancery to the Sheriff to deliver him out of Priſon. 2 *Inſt.* 623.

4. The Commiſſary at his Viſitation had cited ſeveral Men of ſeveral Pariſhes to appear before him, and for not appearing they were excommunicated. A Prohibition was granted thereupon; for that the Ordinary has not Power to cite any to that Court, but the Church-wardens and Sideſmen, and thoſe he may impanel and give Articles to, for to inquire, as the Juſtices of Aſſiſe may. *Noy* 123.

5. If one be excommunicated againſt Law, he ſhall have a Writ out of Chancery, directed to the Biſhop, commanding him to aſſoil him, and if he will not, his Temporalties ſhall be ſeiſed, &c. 30 *Aſſ. pl.* 19. 1 *Ven.* 5.

6. A Prohibition with a *Mandamus* was moved for to the Spiritual Court of *York* to abſolve one taken up on an *Excom. Cap.* becauſe he had not anſwered when he could not procure a Copy of the Articles againſt him. *Et ea de Cauſa & non alia*, it was granted, which was done with Intent, as it ſeemed,

ſeemed, to have an Action *ſur le Caſe*. 1 Sid. 403.

7. If the Spiritual Court excommunicate one for Treſpaſs, or other Temporal Concern, a *Præmunire* lieth againſt both the Party and the Judge; for that the King may loſe great Advantage which he ſhould have had from ſuch Suits being in his Majeſty's Temporal Courts, and the Party is injured by being in ſuch Caſe called before the Eccleſiaſtical Court, to anſwer before them of ſuch Things as belong to the Laws of this Realm. *Doct. & Stud. lib.* 2. *cap.* 32.

8. The Statute of *Præmunire* being *in Curia Romana, vel alibi*, which intends *in Curia Epiſcopi*; therefore it is, that if a Man be excommunicated for a Matter of Common Law Cognizance, a *Præmunire* lieth. *Bro. Abr. Præmunire* 12.

9. If one be excommunicated in the Spiritual Court for Treſpaſs, or ſuch other Thing as belongeth to the King's Crown and his Royal Dignity, *&c.* the Party, if he will, may have a *Præmunire facias* againſt him. 3 *Inſt.* 122. *Vide Doct. & Stud. lib.* 2. *cap.* 23. 1 *Vent.* 5.

10. If a Man be excommunicated for a Matter in which Court Chriſtian may award Satisfaction, as for not incloſing the Churchyard, or not apparelling the Church conveniently, in ſuch Caſe *St. Germain* thinks the Party muſt make Reſtitution, or lay a ſufficient Caution, if he be able, before he be aſſoiled; but he ſays, if the Party offer ſufficient Amends, and hath his Abſolution, and the Judge will not make him his Letters of Abſolution, if the Abſolution be of Record in the King's

King's Court, the King may write to the Judge, commanding him that he make the Party his Letters of Abſolution, upon Pain of Contempt; and if the Excommunication be not of Record in the King's Court, in ſuch Caſe the Party may have his Action againſt the Judge Spiritual, becauſe he would not make him his Letters of Abſolution: But if he be not aſſoiled, or not able to make Satisfaction, our Author ſuppoſes, he may as well have his Action in ſuch Caſe, for not aſſoiling him, as where he is aſſoiled, and the Judge will not make him his Letters of Abſolution. And this Author further ſuppoſeth the Law to be the ſame where a Man is accuſed for a Thing which the Judge had no Power to accuſe him in, as for Debt, Treſpaſs, or the like, and that tho' he might have a *Præmunire facias*; for the Judge and the Party may be dead, and then no *Præmuire* lieth, and though they were alive, and condemned in *Præmunire*, yet that doth not avoid the Excommunication; and therefore our Author holdeth the Action well lieth; eſpecially if he be delayed or hindred in bringing of Actions in the King's Courts, by ſuch Excommunication. *Doct. & Stud. lib.* 2. *cap.* 32. *fo.* 118. *b.* 119. *a.*

11. If one be excommunicate in the Spiritual Court for Debt, Treſpaſs, or ſuch other Things as belong to the King's Crown, and to his Royal Dignity, he ought to be aſſoiled without making any Satisfaction; for the Spiritual Court exceedeth its Power in that they yield Plea in thoſe Caſes, and the Party, if he will, may have thereupon a *Præmunire facias*, as well againſt the

the Party who ſued him, as againſt the Judge; and therefore in this Caſe they ought in Conſcience to make Abſolution without any Satisfaction; for they have not only offended the Party in calling him to anſwer before them of ſuch Things as belong to the Laws of the Realm, but alſo the King, by reaſon of ſuch Suits, may loſe great Advantages, by reaſon of the Writs, Originals, Judicials, Fines, Amerciaments, and ſuch other Things as might grow to him if Suits had been taken in his Courts according to his Laws, &c. *Dr. & Stud. lib.* 2. *cap.* 32. *fo.* 118. *a.*

12. If one excommunicate offer to obey and perform the Sentence, and the Biſhop refuſe to accept and to aſſoil him, he ſhall have a Writ to the Biſhop requiring him thereto; and the Reaſon is, for that by Excommunication the Party is diſabled to ſue any Action, or to have Remedy for any Wrong done him, ſo long as he is excommunicated; and alſo the Party grieved may have his Action of the Caſe againſt the Biſhop in like Manner as when the Biſhop excommunicated him for Matter not belonging to Eccleſiaſtical Cognizance; alſo the Biſhop in theſe Caſes may be indicted at the Suit of the King, as by many notable Records may appear. 2 *Inſt.* 623. *Mich.* 7 *E.* 1. *coram Rege Rot.* 33. *Robertus Sprot. Hill.* 7 *E.* 1. *coram Rege Rot.* 8. *Magiſter R. de Petchford. Paſch.* 32 *E.* 1. *coram Rege Rot.* 33. *Walterus de Winton. Hill.* 35 *E.* 1. *coram Rege Rot.* 52. *Gloc. Prior de Gloceſter's* Caſe. *Mich.* 19 *E.* 2. *coram Rege Rot.* 53. *Lin. Philip White's* Caſe. *Trin.* 20 *E.* 3. *coram Rege Rot.*

Rot. 46, 289. *Freſile's* Caſe. Vide poſt *Premunire.*

7. *How Excommunication is to be pleaded.*

1. IT is not a good Plea to ſay a Man is excommunicated in the Court of *Rome* for a Matter triable here. 14 *H.* 4. 14.

2. A Biſhop's Excommunication was pleaded in Bar, and the Certificate of the Biſhop of *Landaff* was ſhewn, *ſans* mention by what Biſhop he was excommunicate; and therefore the Certificate was reſolved vicious, and the Biſhop's Abſolution was ſhewn; but the Court thought that inſufficient; for it ought to be by the ſame Biſhop, unleſs it had been by Appeal. *Moor pl.* 1070.

3. Excommunication how to be pleaded. *Fitz. Abr. Excomm.* 14, 15. Vide etiam *Forcible Entry.*

8. *How to be tried.*

EXcommunication to be tried by Inqueſt. *Fitz. Abr. Excom.* 19.

9. *The Judgment.*

WHEN the Defendant is excommunicated the Judgment is, that the Defendant *ala a Dieu*, and when aſſoiled, he ſhall have a Reſummons, or Reattachment, &c. for the Writ is not abated. *Fitz. Abr. Excom.* 25.

10. *The Effect.*

1. IN Debt by Adminiſtrators, the Defendant ſaith, that one of the Adminiſtrators is excommunicated. *Sed non allocatur*; for that they are to recover *en auter droit*, *&c.* Fitz. Abr. Excom. 13, 22.

2. Debt by two Executors, the Defendant ſaith, that one of them is excommunicated, he was ſevered, and the other ſued alone. *Fitz. Abr. Excom.* 22.

3. Excommunicated Perſons or Outlaws may recover *en auter droit*, not of themſelves, as where Executors, *&c. Fi. Law*, *fo.* 27.

4. An excommunicate Perſon cannot make a Will. *Milford* and *Lord Herbert & al'*, in *Caſes in Law and Equity*, 2 *Pt. fo.* 113.

5. The Plaintiff excommunicated prayed a Prohibition for not delivering a Copy of the Libel, which the Court granted; but conceived that, on Delivery of the Libel, the Excommunication ſtands in Force. 1 *Keb.* 726. *Quære de hoc.*

11. *Who muſt abſolve.*

1. *General.*

1. ABſolution muſt be by the ſame Biſhop who excommunicated. 2 *Cro.* 80. *Baker* v. ———, *Moor* 775. *Dr. and Stud. lib.* 2. *c.* 36.

2. And

2. An Excommunication was pleaded in Bar, and the Certificate of the Biſhop of *Landaff* was ſhewn, without mentioning in it by what Biſhop he was excommunicated; and therefore the Certificate was reſolved vicious by the Rule of the Court. And the Abſolution of the Archbiſhop was ſhewn; but the Court thought it inſufficient, becauſe it ought to be by the ſame Biſhop; unleſs it was by Appeal. *Moor pl.* 1070.

2. *Good or not; or how far.*

In the King's Bench. *Martha Powell* ſued *Harman* in the Eccleſiaſtical Court for not marrying her upon a Contract; and Sentence was, that he ſhould marry her; which he not doing was excommunicated; whereupon he appealed to the Delegates, and it was remanded to the firſt Court, who ſentenced him again, and he was excommunicated for Non-performance of the Sentence; upon which laſt Excommunication he appealed to the Audience, and had Abſolution; and being taken upon the firſt Excommunication by a *Ca. Excommunicatum*, he brought his *Habeas Corpus* in the King's Bench, where two Points were moved, 1. If the Abſolution for the laſt purged the firſt Excommunication; whereupon the Court hearing Civilians reſolved not: *Quia Eccleſia decepta fuit* in abſolving the laſt where the firſt ſtood in Force, and no Notice taken of it. 2. They agreed, that the Appeal did not ſuſpend the Excommunication; though it might ſuſpend the Sentence. *Moor fo.* 849, 850. *Caſe* 1155.

12. *Penance.*

1. *General.*

1. SI *Prælatus imponat pœnam pecuniariam alicui pro peccato, & repetat illam, Regia prohibitio locum habeat.* 2 Inſt. 489.

2. In Caſe of Commutation of Penance it muſt be after Sentence. 3 *Inſt.* 150.

3. If the Party will redeem his Penance, and agree to pay the Party damnified a certain Sum, in ſuch Caſe the Party damnified may ſue for it in the Spiritual Court. 4 *Co.* 20. For Penance and Commutations, ſee 5 *Co. De Jure Regis Eccl.* 9. *a.*

IX. *Appeals.*

1. *How to be purſued.*

1. IN *H.* 2.'s Reign this antient Cuſtom of the Realm was revived, (to wit) that Appeals ſhould be in Cauſes Eccleſiaſtical from the Archdeacon to the Ordinary; from him to the Metropolitan; from him to the King, and no further. *Dav.* 90. *b.* 91 & 92. *a. b.*

2. At the Parliament holden at *Clarendon*, called *Aſſiſa de Clarendon*, *anno* 10 *H.* 2. *c.* 8. the Form of Appeals in Cauſes Eccleſiaſtical are ſet down within the Realm, and none to be made out of the Realm, *Ne quis appellat ad Dominum Papam. Rex ægrè tulit appel. ad Papam in Cauſa Baſtardiæ, ut con-*

tra Dignitatem Regis: De Conſilio igitur (the Record ſpeaking in the Perſon of the King) *Magnatum & fidelium nobis aſſiſten. vobis mandamus, firmiter injungentes, quatenus non obſtante appellatione præmiſſa non differatis pro eo Sententiam, &c.* So as the firſt Article of the Statute 25 *H.* 8. concerning the Prohibition of Appeals to *Rome*, is declaratory of the antient Common Law of the Realm. 4 *Inſt. fo.* 340, 341.

3. *Item*, there is a general Clauſe in the Statute 25 *H.* 8. that all Manner of Appeals, what Matter ſoever they concern, ſhall be made in ſuch Manner, Form and Condition, ordered by the Statute 24 *H.* 8. in the three Cauſes *mentioned under the Title Delegates*; and one farther Degree in Appeals for all Manner of Cauſes is given (*viz.*) from the Archbiſhop's Court to the King in Chancery, where a Commiſſion ſhall be awarded for the Determination of the ſaid Appeal, and from thence no farther. 4 *Inſt.* 340.

But this doth not exclude Commiſſions of Review, which the King by his Prerogative may grant at Diſcretion.

4. *Item*, Perſons exempt ſhall likewiſe purſue their Appeal in the Chancery, *ut ſupra*, and not to the Archbiſhop. 4 *Inſt.* 340.

5. Nota; *In Appellis per Doctorem Leeves Judic. Admiral. & al', &c.* Foraſmuch as an Appeal is a natural Defence it cannot be taken away by any Prince or Power; and in every Caſe generally when Sentence is given, and Appeal made to the Superior, the Judge who gave the Sentence is bound to obey the Appeal, and proceed no further, till the Superior has examined and determined the Cauſe of Appeal. Nevertheleſs where

where this Clauſe (*appellatione remota*) is in the Commiſſion, the Judge who gave or pronounced the Sentence is not bound to obey the Appeal; but may execute his Sentence, and proceed further, until the Appeal be received by the Superior, and an Inhibition be ſent unto him, (*the Judge who pronounced the Sentence*) for that Clauſe, *Appellatione remota*, hath three notable Effects. The firſt is, that the Juriſdiction of the Judge who gave the Sentence is not by the Appeal ſuſpended or ſtopped, for he may proceed the ſame notwithſtanding. The ſecond, that for proceeding to Execution or further Proceſs he is not puniſhable. The Third, that thoſe Things which are done by the ſaid Judge, after ſuch Appeal, cannot be ſaid void; for they cannot be reverſed *per viam nullitatis*; but if the Appeal be juſt and lawful, the Superior Judge ought of Right and Equity to receive and admit the ſame; as he ought to do Juſtice to the Subject. And ſo if the Cauſe of Appeal be juſt and lawful, he ought to reverſe and revoke all mean Acts done after the ſaid Appeal in Prejudice of the Appellant. 4 *Inſt.* 340.

6. Appeals in Eccleſiaſtical Cauſes. 5 *Co. De Jure Regis Eccl.* 9. *a. &c.*

2. *The King the Dernier Reſort.*

IT appears, as my Lord *Hale* obſerves, that as the Juriſdiction exerciſed in the Eccleſiaſtical Courts is derived from the Crown; ſo the laſt Devolution is to the Crown by Appeal. *Hale's Hiſt. of the Law* 43.

B.

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I. *The Sorts.*

1. ECcleſiaſtical Magiſtrates, who have Juriſdiction annexed, are of two Kinds. 1. Ordinary. 2. Extraordinary.

1ſt, The Ordinary alſo are of two Sorts.

1. Such as have Eccleſiaſtical Juriſdiction annexed to their Places and Offices primarily and originally; as Archbiſhops, Biſhops, Archdeacons.

2. Such as have their Juriſdiction by Subſtitution, and Delegation, from them; as Chancellors, Officials, Surrogates, Vicars General, *&c.* *Hale's Anal.* 30.

2d, The Extraordinary Eccleſiaſtical Magiſtrates are certain Perſons appointed by the King's Commiſſion, for hearing and determining Matters of Eccleſiaſtical Cognizance, the King being Supreme Head in Matters Eccleſiaſtical; and this either,

1. In the firſt Inſtance, ſuch as were antiently Commiſſioners in Matters Eccleſiaſtical, either *ad univerſalitatem Cauſarum*, or in particular Caſes.

2. In the ſecond Inſtance, as Commiſſioners of Appeal and Review. *Hale's Anal.* 30, 31.

II. *General.*

1. ORdinary, *Ordinarius*, is he who hath Ordinary Juriſdiction in Cauſes Eccleſiaſtical immediately to the King, and his Courts

Courts of Common Law, for the better Execution of Juſtice; as the Biſhop, or any other, who hath exempt and immediate Juriſdiction in Eccleſiaſtical Cauſes. *Co. Litt.* 344. *a.*

III. *Who to be, and their Qualifications, and what qualificatory Acts to do.*

1. NO Man hereafter ſhall be admitted a Chancellor, Commiſſary, or Official, to exerciſe any Eccleſiaſtical Juriſdiction, except he be of the full Age of ſix and twenty Years at leaſt, and one that is learned in the Civil and Eccleſiaſtical Law, and is at leaſt Maſter of Arts, or Bachelor of Law, and is reaſonably well practiſed in the Courſe thereof, as likewiſe well affected, and zealouſly bent to Religion: And except before he enter into, or execute, any ſuch Office, he take the Oath of Supremacy, in the Preſence of the Biſhop, or, in open Court, ſubſcribe the Articles of Religion, *Anno* 1562. and ſhall ſwear that he will, to the uttermoſt of his Underſtanding, deal uprightly, and juſtly in his Office, without Reſpect or Favour of Reward: The ſaid Oath and Subſcription to be recorded by a Regiſter then preſent. And likewiſe all Chancellors, Commiſſaries, Officials, Regiſters, or others poſſeſſing or executing any Places of Eccleſiaſtical Juriſdiction, or Services, *as in the ſaid Canon is for that Purpoſe named or intended*, ſhall, in the Preſence of the Archbiſhop, or Biſhop, in open Court, under whom or

where they exerciſe their Offices, take the ſame Oaths, and ſubſcribe, as aforeſaid, or be ſuſpended till they do. *Can.* 127.

IV. *They are Bodies Politick.*

1. ALL Eccleſiaſtical Officers are Bodies Politick, as in *Grendon*'s Caſe in *Plow. Com.* 497. *Dav.* 85. *a. b.*

V. *They are bound to take Notice of the Temporal Laws.*

1. THE Judges Spiritual are bound to take Notice, what the Common Law is; for if the Thing under Litigation is Temporal, it is Reaſon that the Right of them be determined by the Laws of the Realm. *Doct. & Stud. lib.* 2. *cap.* 25. *fo.* 221, 237, &c.

2. Where Matters which the Eccleſiaſtical Judges have not Cognizance of, fall in incidentally into the principal Matter of which they have Cognizance, they may be prohibited, if they judge the Effect of it contrary to our Law. 1 *Vent.* 291.

3. If a Temporal Matter be pleaded in Bar of an Eccleſiaſtical Demand, they muſt proceed in the Eccleſiaſtical Court according to the Temporal Law; or elſe the Temporal Courts will hinder them. *Show.* 158. 1 *Vent.* 313.

4. Spiritual Judges are bound and ought to know the Common Law, when and where the Knowledge of it openeth to them the Right of the Matter depending before them, and

and in which they are *in Duty*, *in Virtue of their Oaths and Conſcience*, bound to follow it; *for in ſuch Caſes the Common Law is the Law Spiritual of the Realm*, as may appear by divers Caſes, whereof one is this; Two Jointenants are of Goods, and one by Will bequeaths his Part to a Stranger, and makes the other Jointenant his Executor, and dies; if he to whom the Bequeſt is made ſue the other Jointenant on the Legacy, as Executor, *&c.* on this Matter ſhewed, the Judges of the Spiritual Law are bound to judge the Will void; becauſe it is void by the Law of the Realm; whereby the Jointenant hath Right to the whole, by the Law of Survivorſhip, which is before, *and paramount* to the Title by Will; and muſt therefore be preferred, as the elder Title; and if the Judges of the Spiritual Courts judge otherwiſe, they are bound to Reſtitution; and by like Reaſon the Executor of one outlawed, at the Time of his Death, may diſcharge himſelf in the Spiritual Court from the Payment of Legacies; for that ſuch Executor is chargeable to the King, and yet there is no Law of Outlawry in the Spiritual Law. *Doct. & Stud. lib. 2. c. 25.*

5. *St. Germain* alſo complains, that many Spiritual Rulers were in great Offence againſt God; having ſpoken ſo much, that Prieſts ſhould not be put to anſwer before Laymen, eſpecially of Felonies and Murders; and of the Statute 45 *E.* 3. *c.* 3. which ſaith, that a Prohibition ſhall lie where one is ſued in the Spiritual Court for Tithes of Wood above the Age of twenty Years, by the

the Name of *Silva Cædua*; nay, he tells us, that they had in open Sermons, and in divers other open Communications and Councils, cauſed it to be openly notified and known, that they ſhould be all accurſed who put Prieſts to anſwer, or who maintained the ſaid Statute, or any other like it; and yet when they have found, that the ſame have been uſed notwithſtanding their Gainſaying, they have ſat ſtill and let the Matter paſs; ſo having brought many, who believed them, and yet acted contrary, into Danger, they have left them, and done nothing further to deliver them; whereas if what they ſay be true, they ought to ſtick to it with Effect, in all Charity, till it were reformed; and if it was not as they ſay, then they have cauſed many to offend who have believed them, and yet acted contrary to ſuch Belief, and who perhaps had not offended, if the Clergy had not broached theſe Notions, *&c. Doct. and Stud.* 56. *b.* 57. *a.*

6. *This Author* marvelled, that Spiritual Men had not, and did not then endeavour to have, more Knowledge in the King's Laws than they either had or then did; for that by their Ignorance thereof, they very often, knew not how to govern themſelves according to Right and Juſtice any more than others. *Doct. & Stud. lib.* 1. *cap.* 20.

7. And, in ſuch Caſes, the Spiritual Judges (if they do not themſelves underſtand thoſe particular Parts of the Common Law, as relate to, or interfere with, their Laws) are bound to inquire of them who are learned in the Common Law, and to

to judge accordingly, if they will keep themſelves from the Offence of Conſcience. *Doct. & Stud. lib.* 2. *c.* 25. *fo.* 226. But ſaith the ſame Author, in another Place, it is to doubt, that ſome of them, *meaning Eccleſiaſtical Judges*, would be loth to ask any ſuch Queſtion, in ſuch Caſe, or to confeſs that they are bound to give their Judgment after the Temporal Law; and ſurely, ſaith he, they may lightly offend their Conſciences. *Doct. & Stud. lib.* 2. *cap.* 25. *fol.* 222, 237, 238. *Rol. Abr. Prohibition* U. *Caſe* 13.

8. If the Spiritual Court admit a Will; but yet will not give the Probate to the Executor, becauſe he cannot give Security, for a juſt Adminiſtration, a *Mandamus* lieth; for the Executor hath a Temporal Right, and they cannot put Terms upon him, but what are mentioned in the Will. *Gilb.* 208.

9. Where any Temporal Matter depends on an Eccleſiaſtical Cauſe, and is neceſſary to be determined with it; there tho' the Eccleſiaſtical Judge, may try ſuch Temporal Matter; yet he ought to do it, by the Rules of the Common Law, to which it commonly belongeth; elſe the Common Law Judges would interpoſe by ſending Prohibitions, and that with this Diſtinction, were all the Caſes wherein the Temporal Judges had differed from the Civilians to be reconciled. 1 *Pe. Will. Rep.* 12.

VI. *Their*

VI. *Their Acts.*

1. *How to be taken.*

1. MY Lord Ch. Juſt. *Holt* ſaid, what the Dean of the Arches does, the Archbiſhop does, as what the Chancellor does, the Biſhop does. *Dolbin* J. The Dean of the Arches is the very Archbiſhop. It is one and the ſame Juriſdiction. 1 *Show. Rep.* 251, 252.

2. The Commiſſary, *nor the Chancellor, as I take it*, is not, but the Biſhop is, the Officer to certify the King's Courts; and therefore the Commiſſary's, &c. Certificate is void. *Fitz. Abridg. Excommunication.*

3. The Power of a Chancellor or Vicar General is only delegated in Eaſe of the Biſhop. *Watſon*, Biſhop of *St. David's* Caſe in *Salk.*

See alſo *The Clergy may puniſh their own Members.*

VII. *Subordinate to the Temporal Courts.*

1. *General.*

1. BIſhops called inferior Judges. *Hob.* 185.

2. The Archbiſhop, &c. is no Officer to execute any Thing done by the Pope. *Fitzh. Abr. Excommunication* 21.

3. In

3. In many Caſes the Biſhops are but Miniſters of the King's Courts. *Hob.* 294.

4. The Biſhops of *England* are the immediate Officers and Miniſters to the King's Courts. 5 *Co. De Jure Regis Eccl.* 15. *b. tempore Ed.* 3.

5. Archbiſhops and Biſhops in *Hen.* 4.'s Time called the King's Spiritual Judges. 5 *Co. De Jure Regis Eccl.* 22. *b.*

6. Biſhops, by the Common Law, are the immediate Officers and Miniſters of Juſtice to the King's Courts, in Cauſes Eccleſiaſtical. 5 *Co. De Jure Regis Eccl.* 23. *b.*

7. *Epiſcopus*, the Biſhop, is regularly, the King's immediate Officer to the King's Courts of Juſtice in Cauſes Eccleſiaſtical, all the Biſhopricks in *England* are of the King's Foundation, and he is Patron of them all, and at firſt they were donative, and ſo it appears by our Books, by Acts of Parliament, and by Hiſtory, and that *per Traditionem Annuli, & Paſtoralis Baculi, i. e.* The Croſier, *&c. Co. Lit.* 134. *a.* 344. *a.* 3 *Co.* 75. *b.*

8. Of the King's Court the Ordinary or Biſhop is not a Judge, but a Miniſter only, and the Judges of that Court are to Judge; as where one was arraigned of Felony, the Ordinary, or his Deputy, ought to have given his Attendance, to the End, that if the Benefit of the Clergy was demanded, that he (*the Ordinary*) might have informed the Court of his Sufficiency or Inſufficiency, and yet the Judges of the Court were to Judge of the Sufficiency or Inſufficiency of the Party, whatever the Ordinary informed them,

them, and on due Examination of the Party, might have given Judgment against the Ordinary's Information; for the King's Judges are the Judges of the Cause. 5 Co. *De Jure Regis Eccleſiaſt.* 27. *a.* 9 *E.* 4.

9. A Bishop is a meer Spiritual Officer. 1 *Vent.* 319.

10. Regularly the Ordinary at Common Law, had no Power over a Clergyman, in a Crime or Offence touching the Crown, but where that Power was given him by the Common Law. *Hob.* 290. And therefore when the King's Court did deliver the Offender to the Ordinary, it implied a Power or Permiſſion of the Law, that he might deal with him to convict or diſcharge him, according to the Form of their Laws; but ſince the Statute hath forbid the Delivery of him to the Ordinary, it retains all Power to itſelf, and denies the Ordinary's; and therefore, if the Ordinary, at Common Law, would have convened a Church-man to have deprived or degraded him for Felony, before his Trial at Common Law, a Prohibition would have lain for holding a Plea of a Cauſe of the Crown, and prejudging the King's Court *in eadem.* *Hob.* 290.

11. Before Reading was taken away, in Caſe of the Benefit of the Clergy prayed, if the Ordinary had refuſed him, who was capable, yet he ſhould not die: *Et è converſo*, if the Ordinary ſaid he read, where he could not, yet he ſhould die. 9 *E.* 4. 28. *Hob.* 290. And if the Ordinary be abſent, the Court may fine him, and proceed without him, and over-rule any falſe Certificate, or

or Anſwer. The Court may give the Priſoner the Book, and enter his Reading, and remand him to Gaol, &c. *Hob.* 290.

12. If a Clerk were found Not guilty of Felony and diſcharged, and the Ordinary would convene him again, and admit new Proof that he was guilty, in order to deprive him, they were to be prohibited; or if upon a Clerk delivered *abſque purgatione* to the Ordinary, they would admit him to his Purgation, a Prohibition would lie, yea and a *Præmunire* too; and yet theſe Offences are not ſo highly Pleas of the Crown; as in criminal Caſes there are Degrees, as Treaſon, and even ſome againſt the King's own Perſon. Alſo if they would proceed between Conviction and Clergy, a Prohibition would lie, for Prevention; becauſe the Cauſe is not finiſhed, in the King's Court; but if they would not controvert nor reexamine the Acts of the King's Courts, but build their Sentences upon them, they were not to be prohibited, as if they deprived a Man by Sentence, becauſe he was convicted or attaint of Felony, Murder, or Manſlaughter, at Common Law. *Hob.* 290, 291. 2 *Inſt.* 637.

13. *North.* The Biſhop is in Nature of an Eccleſiaſtical Sheriff; if an Action of Debt were brought againſt a Clerk, and the Sheriff had returned, upon a *Sci. fa.* that the Defendant was *Clericus beneficiatus non habens Laicum feodum*; there iſſued a *Fi. fa.* to the Biſhop, upon which he uſed to ſequeſter (as they call it) the Eccleſiaſtical Poſſeſſions of the Defendant; but that is not properly a Sequeſtration; for the Ordinary

muſt not return *Sequeſtrari feci*, he muſt return *Fi. feci* or *Nulla bona* in like Manner as a Sheriff of a County muſt do; this I have known, *ſaid his Lordſhip*, in Experience, That a Biſhop hath been ordered in ſuch a Caſe to amend his Return; the Reaſon of this Proceſs was, becauſe the Poſſeſſions of Eccleſiaſtical Perſons were ſo diſtinct from Temporal Poſſeſſions, that they could not be ſubject to the ordinary Proceſs of the Temporal Law, no more than the Poſſeſſions of Laymen could be ſubject to Eccleſiaſtical Juriſdiction; and therefore Rectories impropriate being now incorporated into the Common Law, and converted into Lay Fees, it ſhould ſeem to me, *ſaid his Lordſhip*, that they are thereby exempted from the Juriſdiction of the Ordinary, and this *his Lordſhip ſaid*, he took to be within the Reaſon of *Jefferies*'s Caſe in the 5th *Rep.* where Temporal Perſons, who are liable to contribute to the Repair of the Church out of their Temporal Poſſeſſions, are ſaid to be compellable thereunto by Eccleſiaſtical Cenſures. 1 *Mod.* 260, 261. After by the whole Court it was held, that what the Ordinary doth in ſuch Caſe is in the Nature of a Temporal Officer, for the Sequeſtration is like a *Fi. fa.* and being directed to the Biſhop, he is in that Caſe, (if he may be ſo called) an Eccleſiaſtical Sheriff, and by Virtue thereof may do, as the Sheriff doth in other Caſes, that is, he may ſeize Eccleſiaſtical Things, and ſell them, as the Sheriff doth in Temporal Things upon a *Fi. fa.* but it is to be obſerved, he muſt return *Fi. feci*, and not *Sequeſtrari feci* upon this

this Writ. 2 *Mod.* 257. *Vide Eccl. Courts, where they exceed their Juriſdiction, Ca.* 17.

2. *Where they act iniquitouſly.*

1. *General.*

Vide the Courts where they act injuriouſly.

2. *Where guilty of Bribery.*

1. *What it is, and wherefore, and how puniſhed.*

1. BRibery (cometh from the Word *Briber*, to devour or eat greedily) it is a great Miſpriſion, when any Man, in judicial Place takes any Fee, Penſion, Gift, Reward, or Brocage for doing his Office; but of the King only. *Forteſcue, cap.* 51.

2. Bribery is a great Miſpriſion, when any Man in Judicial Office takes any Fee, Penſion, Robe, or Livery, Gift, Reward, or Brocage, of any Perſon that hath to do before him any Way, for doing his Office, or by Colour of his Office, but of the King only; unleſs it be of Meat and Drink, and that of ſmall Value, upon divers and grievous Puniſhments. 3 *Inſt.* 145, 146.

3. Bribery is a Miſpriſion; for that it is neither Treaſon nor Felony: And it is a great Miſpriſion; for that it is ever accompanied with Perjury. 3 *Inſt.* 146, 147, 148, 149.

4. Bribery may be committed by any that hath any Judicial Place. 3 *Inſt.* 147.

5. Bribery may be committed, not only when a Suit is depending *in foro contentioſo*, but alſo when any in Judicial Place doth any ſuch Thing *virtute* or *colore Officii*, though there be no Suit at all. 3 *Inſt.* 148.

6. Though the Bribe be ſmall the Fault is great. 3 *Inſt.* 147.

7. *Anno* 21 *H.* 8. by Articles under the Hands of all the Lords of the Privy Council, where Sir *Thomas Moore*, then Chancellor, was one of the Principal Judges of the Realm; Cardinal *Woolſey* was charged with divers Briberies named in the eighteenth Article, in theſe Words: "Alſo the ſaid Lord "Cardinal conſtrained all Ordinaries in "*England* yearly, to compound with him "or elſe he would uſurp Half, or the Whole "of their Juriſdiction, by Prevention, not "for good Order of the Dioceſe, but to "extort Treaſure; for there was never a "poor Archdeacon in *England*, but that he "paid to him a yearly Portion of his Li-"ving. 3 *Inſt.* 148.

8. If a Biſhop or other Eccleſiaſtical Judge or Miniſter doth exact a Bond or Oath of any Perſon in any Caſe not warrantable by Law, the Bond is void; and this Exaction is puniſhable by Fine, &c. 3 *Inſt.* 149.

9. *Officialis indictatus de Citando & Affligendo Plurimos, non poteſt dedicere, & petit quod admittatur ad finem.* 3 Inſt. 149.

10. The Difference between Bribery and Extortion is, that Bribery is only committed by him who hath a Judicial Place, and Extortion

tortion may be committed, either by him who hath a Judicial Place; or by him who hath only a Ministerial Office. 3 *Inst.* 147.

3. *Where guilty of Extortion.*

1. *What it is.*

1. EXtortion is derived from the Verb *Extorqueo*, and it is called *Crimen Expilationis*, or *Concussionis*. Co. Lit. 368. b.

2. *Extortio est Crimen quando quis colore officii extorquet quod non est Debitum, vel quod est supra Debitum, vel ante Tempus quod est Debitum*; and this is called *Crimen Expilationis & Concussionis*. 10 Co. 102. a.

3. Extortion is defined to be a Wrong done by any Officer, Ordinary, Archdeacon, Official, Mayor, Bailiff, Sheriff, *&c.* by Colour of his Office, by taking excessive Reward, or Fee, for Execution of his Office or otherwise, and is nothing less than downright Robbery; or rather more odious; for as to Robbery, it is apparent and always carries with it the Countenance of Vice; but Extortion, tho' as great a Vice as Robbery is, bears the Semblance and Appearance of Virtue, which makes it harder to be discerned, and therefore is the more odious; and yet there are some who will not stick to stretch, *or make most, as they call it*, of their Offices, Credit and Conscience too, go to compass Money, whether by Extortion, or otherwise, according to *Virgil*, *Quid non mortalia pectora cogis auri sacra fames?* *Vide* Terms de Ley *tit.* Extortion.

4. *Plowden* deſcribes Extortion to be what is unduly taken *colore Officii ſui*, and he ſays it is always taken *in malam partem*, and ſignifieth an evil Act done by Countenance of Office; and it beareth, ſaith he, a diſſimulant Viſage of Duty, *and he alſo ſaith* it is no leſs than Robbery; but more odious; for Robbery is apparent and beareth the Countenance of Vice, but Extortion beareth the Form of Virtue; and ſo is more difficult to be tried, and found out; and therefore much the more hateful of the Two, *&c.* *Plow. Com.* 68.

5. Extortion is a great Miſpriſion; becauſe it is accompanied with Perjury. 3 *Inſt.* 149.

6. Extortion, in its proper Senſe, is a great Miſpriſion, by wreſting, or unlawfully Taking, by any Officer, any Money, or valuable Thing, of or from any Man, either that is not due, or more than is due, or before it is due: *Quod non eſt Debitum, vel quod eſt ultra Debitum, vel ante Tempus quod eſt Debitum.* Co. Lit. 368. b.

7. Largely Extortion is taken for any Oppreſſion, under Colour of Right; but in a ſtrict Senſe it ſignifieth the Taking of Money by any Officer, by Colour of his Office, either where none at all, or not ſo much, is due, or where it is not yet due. *Hawk. Pl. Cro. lib.* 1. *fo.* 170. 6 *Mod.* 193.

8. Of this Term it is ſaid, That it is no other than Robbery, and others ſay it is more odious, as Robbery is apparent and beareth the Face of the Crime; but Extortion putteth on the Viſor and Appearance of Virtue, for the Expedition of Juſtice, and

and the like; and it is ever accompanied with the grievous Sin of Perjury. 11 *Co.* 101. *b.* *Co. Lit.* 368. *a.* *As it is contrary to the Duty and Oath of Officers.*

2. *Where, and how, puniſhed.*

1. The Eccleſiaſtical Court may puniſh an Eccleſiaſtical Officer for Extortion. *Watſon*, Biſhop of *St. David's* Caſe.

2. No Biſhop, Suffragan, Chancellor, Commiſſary, Archdeacon, Official, nor any other exerciſing Eccleſiaſtical Juriſdiction whatſoever; nor any Regiſter of any Eccleſiaſtical Courts, nor any Miniſter belonging to any of the ſaid Offices or Courts, ſhall hereafter for any Cauſe incident to their ſeveral Offices take or receive any other or greater Fees than ſuch as were certified to the Moſt Reverend late Archbiſhop of *Canterbury*, *Anno* 1597, and were by him ratified and approved, under Pain that every ſuch Judge, Officer, or Miniſter, offending herein, ſhall be ſuſpended from the Exerciſe of their ſeveral Offices for the Space of ſix Months for every ſuch Offence, always provided, That if any Queſtion ſhall ariſe concerning the Certainty of the ſaid Fees or any of them, thoſe Fees ſhall be held for lawful, which the Archbiſhop of *Canterbury* for the Time being ſhall under his Hand approve; except the Statutes of this Realm do in any particular Caſes expreſs ſome other Fees to be due: Provided furthermore, that no Fees or Money ſhall be received, either by the Archbiſhop, or any

Biſhop, or Suffragan, either directly, or indirectly, for admitting of any into Sacred Orders; nor that any other Perſon or Perſons under the ſaid Archbiſhop, Biſhop or Suffragan, ſhall for Parchment, or Writing, Wax, and Sealing, or any other Reſpect thereunto appertaining, take above 10 *s.* under ſuch Pains as are by the Law already preſcribed. *Can.* 135.

3. *Stat. W.* 1. *c.* 26. By which it is enacted, that no Sheriff, or other Miniſter of the King, ſhall take any Reward to do his Office, is a general Act, and extends to all Officers in general. 4 *Co.* 76. *b.*

4. It is provided by the ſaid *Stat. W.* 1. *cap.* 26, *&c.* that no Miniſter of the King ſhall take any Reward for doing of his Office, *ut ſupra*, (*and Eccleſiaſtical Officers are clearly the King's Officers*;) but only that which the King alloweth him, on Pain to deliver double to the Party, and to be puniſhed at the King's Pleaſure: And this was the antient Common Law, and puniſhable by Fine and Impriſonment. See the *Stat.* 21 *H.* 8. *c.* 5. ſetting down the Fees of Ordinaries, Regiſters, and other *Officers*, in certain Caſes. *Co. Litt.* 368. *Hawk. Pl. Cra. lib.* 1. *fo.* 170.

5. It being complained of, that the Miniſters of Biſhops and other Ordinaries of Holy Church, did take of the People grievous and outragious Fines for Probate of Teſtaments, and for making of Acquittances thereof, the King hath charged the Biſhop of *Canterbury*, and the other Biſhops, that they cauſe the ſame to be amended, and if they do not, it is accorded, that the King ſhall

ſhall cauſe to be inquired by his Juſtices, of ſuch Oppreſſions and Extortions, to hear them and determine them as well at the King's Suit, as at the Suit of the Party; as in old Times hath been uſed. 31 *E.* 3. *c.* 4. *Vide* 3 *H.* 5. *c.* 5.

6. This Statute reciting 31 *E.* 3. *c.* 4. and alſo reciting the Statute 3 *H.* 5. wherein is recited, that the Commons of the Realm had often complained in divers Parliaments, that divers Ordinaries took for Probate of Teſtaments, and other Things thereunto belonging, ſometimes 40 *s.* ſometimes 60 *s.* and ſometimes more, againſt Right and Juſtice; where in the Time of *E.* 3. Men were uſed to pay for ſuch Cauſes but 2 *s.* 6 *d.* or 5 *s.* at moſt; by which unlawful Exactions the Teſtaments of the Teſtators might not be executed according to their laſt Wills; it was than enacted for the avoiding ſuch Oppreſſions, that no Ordinary from thenceforth ſhould take for the Probation of any Teſtament, and Inventory, or other Thing thereto belonging, any more than was accuſtomed and uſed in the Time of the ſaid moſt Noble King *E.* 3. on Pain to yield to the Party grieved three Times as much as they received; which laſt recited Act endured but to the next Parliament; by *Reaſon the Ordinaries then promiſed to reform and amend the ſaid Oppreſſions and Exactions; but this Statute recites, for that theſe unlawful Exactions of the ſaid Ordinaries, and their Miniſters be nothing reformed nor amended, but greatly augmented and increaſed, againſt Right and Juſtice, and to the great impoveriſhing of the King's Sub-*

jects, it is thereby enacted, that from the 1 *April* 1530, that nothing ſhall be demanded, received or taken by any Biſhop, Ordinary, Archdeacon, Chancellor, Commiſſary, Official, or any other Manner of Perſons whatſoever, having Authority or Power to take or receive Probation, Inſinuation, or Approbation of Teſtament or Teſtaments, by himſelf or themſelves, nor by his or their Regiſters, Scribes, Praiſers, Summoners, Apparators, or any other their Miniſters, for the Probation, Inſinuation, or Approbation of any Teſtament or Teſtaments, or for Writing, Sealing, Praiſing, Regiſtring, Fines, making of Inventories, and giving of Acquittances, or other Cauſe concerning the ſame, other Fees than as in the ſaid Act is directed, *in Proportion to the Value of the Teſtator's Eſtate*; *ſee the Act*; And it is thereby further enacted, that every ſuch Biſhop or Ordinary, or other Perſon or Perſons having Authority or Power to take or receive the Probation or Approbation of any Teſtament or Teſtaments, their Regiſters, Scribes and Miniſters, ſhall approve, ſeal, and regiſter from Time to Time the ſaid Teſtaments, and deliver the ſame, ſealed with the Seal of their Office, to the Executor or Executots named, for the ſaid Sums, with convenient Speed; without any fruſtratory Delay. Then the ſaid Act proceeds, directing to whom, and for what Fees, Adminiſtration ſhould be granted in Caſe of Inteſtacy, or the Executor refuſing to prove the Will. And alſo that Lands deviſed to be ſold are not, *quoad the Ordinary*, to be reckoned as any Part of the Goods or Chattels

tels of the Deceaſed, and that ſuch Ordinaries, &c. ſhall, with convenient Speed, without any fruſtratory Delay, deliver true Copies of ſuch Wills and Inventories to the Parties deſiring the ſame, taking for Parchment, and making ſuch Copies, ſuch Fees, as in the ſaid Act are appointed. And in the ſaid Act is a Proviſo, that where has been Uſage to take leſs Fees than thoſe allowed by this Act, no more ſhall be taken than ſuch accuſtomed Fees. And it is by the ſaid Statute provided, that ſuch Ordinaries, &c. offending ſhall forfeit to the Parties agrieved ſo much as they ſhall take contrary to this preſent Act, and over that ſhall loſe and forfeit 10 *l.* Sterling, one Half to the King, and the other to the Party, to be recovered *prout* in the ſaid Statute, &c. *Stat.* 21 *H.* 8. *c.* 5. *Vide Stat.* 26 *H.* 8. *cap.* 15. *Co. Pla. fo.* 166. *Raſt. Pla.* 603.

7. No Judge or Regiſter ſhall take for Writing, Drawing or Sealing of any Commiſſion mentioned in this Canon, for Executors or Suitors for Adminiſtrators, above the Sum of ſix Shillings and eight Pence, whereof one Moiety to be for the Judge, and the other for the Regiſter of the ſaid Court. *Canon* 132.

8. If a Man make his Teſtament in Paper, and die poſſeſſed of Goods and Chattels above 40 *l.* and the Executor cauſe the Teſtament to be tranſcribed in Parchment, and bringeth both to the Ordinary, &c. to be proved, it is at the Ordinary's Election, whether he will put the Seal and Probate to the Original in Paper, or to the Tranſcript in Parchment; but whether he put them to one

one or the other, there can be taken of the Executor, &c. but 5 *s.* and not more, (*to wit*) 2 *s.* 6 *d.* to the Ordinary, &c. and his Miniſters, and 2 *s.* 6 *d.* to the Scribe, for Regiſtring the ſame, or elſe the ſaid Scribe to be at Liberty as to the 2 *s.* 6 *d.* and to have for Writing every ten Lines of the ſame Teſtament, whereof every Line to contain ten Inches, one Penny. 3 *Inſt.* 149, 150.

9. *Wilmot*, on 1 *Cro.* 262. *Hunt*'s Caſe, prayed a Prohibition to the Official of *Lincoln*, ſuggeſting ſeveral Suggeſtions, thrice without Preſentment, or Accuſation, and only Interrogatories exhibited, on Refuſal whereof he was diſcharged, paying Fees, which the Court refuſed; the Proceedings being *ex officio mero*, in which Caſe no Libel exhibited, nor would they grant a Prohibition, but left them to their Indictment of Extortion. 2 *Keb.* 301.

10. See Sir *John Bennet*'s Caſe *poſtea.*

11. Clerks, Regiſters, and other Eccleſiaſtical Officers, are puniſhable for Extortion, as well at Common Law by Indictment, as in the Eccleſiaſtical Courts. *Palm.* 318.

* 12. In all Matters which tend to Extortion or Oppreſſion, the natural Remedy is an Information. *The King* and *Harriſon*, *Mich.* 8 *Geo.* 2. *B. R.*

13. In Extortion, by *Holt* C. J. The Party to enter into Recognizance to anſwer Interrogatories. *Comb.* 448.

14. Though on Affidavit of Extortion, the Courſe be to anſwer Interrogatories, yet in Caſes of great Oppreſſion, the Court may commit the Party; and he muſt anſwer

in

Vinculis. Comb. 449. By Lord Chief Juſtice *Holt.*

21 *H.* 8. *c.* 5. Fees for Probates of Teſtaments if the Goods be beyond 40*l.* is *Caſus omiſſus hors del ſtatute.* *Palm.* 318. And the Faults againſt this Statute were puniſhable at Common Law before. *Palm.* 318. Reſolved, Extortion in Caſes of Letters of Adminiſtration was puniſhable by Indictment at Law, *&c.* *Palm.* 318.

15. If an Executor deſire the Teſtament in Paper may be tranſcribed in Parchment, he muſt agree with the Party for doing it, but the Ordinary can take nothing for doing it, neither for the Examination of it with the Original, but barely 2 *s.* 6 *d.* for the whole Duty belonging to him. 3 *Inſt.* 150.

16. Where the Goods of the Deceaſed do not exceed 100 *s.* the Ordinary, *&c.* ſhall have nothing, and the Scribe for Writing the Probate only Six-pence; ſo the Teſtament be exhibited in Writing with Wax thereunto affixed, ready to be ſealed. 3 *Inſt.* 150.

17. But where the Goods of the Deceaſed do amount to more than 5 *l.* or 100 *s.* and yet do not exceed 40 *l.* there ſhall be taken for the whole but 3 *s.* 6 *d.* whereof to the Ordinary, *&c.* 2 *s.* 6 *d.* *&c.* and where, by the Cuſtom, leſs hath been taken in any of the Caſes aforeſaid, there ſuch leſs Sum only to be taken. 3 *Inſt.* 150.

18. Where any Perſon requires a Copy or Copies of the Teſtament ſo proved, or Inventory ſo made, the Ordinary, *&c.* ſhall take for the Search, and making of the Copy of the Teſtament or Inventory, if the Goods exceed not 100 *s.* Six-pence, if they

they exceed 100 *s.* and do not exceed 40 *l.* they shall take 1 *s.* and if the Goods exceed 40 *l.* then they shall take 2 *s.* 6 *d.* or to take for every ten Lines thereof a Peny, and so in Proportion. 3 *Inst.* 150.

19. In the Case of *James Rowse*, Commissary of the Archdeacon of *Huntingdon*, in an Information against him by *Edmund Neal*, for Extortion upon the Statute 21 *H.* 8. whereunto he pleaded Not guilty, and was found guilty; the Point in Question upon the Information was, if the Probate be not written upon the Testament it self, but upon the Transcript ingrossed, whether the taking of the Fee by the Defendant for the Ingrossing were within the Statute? And it was upon Debate in open Court resolved by the Chief Justice and the Rest of the Justices, *Walmesly*, *Warburton*, *Foster* and *Daniel*, That such a Fee taken by the Defendant for Ingrossing was within the Statute; for that the Act is in the Negative, and if the Executor request any to ingross the Testament, he must agree with him, whom he so requests, or bring one ready ingrossed with him, as he did in the Case in Question, which my Lord *Coke* recommends as a safe and ready Way; but the Ordinary or Commissary ought not to exact a Fee for it of the Party, as a Fee due to him, for divers Causes; 1st, For that the Words are, *for the Probation*, &c. *or for the Registring*, *Sealing*, *Writing*, *Praising*, *Making of Inventories*, &c. which Word, *Writing*, extends to the present Case. 2*dly*, The Words, *or any Thing concerning the said Probate*, and when the Seal and Probate are put to the Transcript

this

this concerns the Probate, for the Probate is not put to any other Writing. 3*dly*, If ſuch a Conſtruction ſhould be made, that this Caſe is out of the Statute, this beneficial Law ſhould be illuſory and vain; for if the Ordinary, or his Commiſſary, might take what he would for the Ingroſſing, by his Clerk, as a Fee due to him, then the Statute would be of no Effect, and the Manner of the preciſe Penning of the Act, and the Certainty of the Fees, and *not above* ſhould be all vain; and the Ordinary, if he will, may annex the Probate to the Teſtament it ſelf, as ſeeing he can have no other Fee, than as in the ſaid Statute. And this Reſolution extends to all Courts of Eccleſiaſtical Juriſdiction, that give Probate of Teſtaments. 4 *Inſt.* 336.

20. The Ordinary may in Conſcience take nothing for proving a Will, if there be not ſufficient Goods to pay the Funerals and Debts, and to make Reſtitution for a Treſpaſs committed by the Teſtator, though the Treſpaſs died with him. *Doct. & Stud. lib.* 2. *c.* 10. *fo.* 75. *b.*

4. *Where liable to Actions in the Temporal Courts.*

1. IF one be ſued in Court Chriſtian, and the Judge will not grant the Defendant a Copy of the Libel or Interrogatories, he ſhall have a Prohibition directed to them to ſurceaſe, *&c.* till they have delivered a Copy according to the Statute 2 *H.* 5. and alſo the Defendant may have an Action

againſt them *ſur le Statute*, if they will not deliver to him a Copy, whether the Cauſe be Spiritual or not. *F. N. B.* 43. *E.*

2. Action upon the Caſe; for that Sir *Daniel Dunn*, Official in the Court of Audience, in a Caſe of an Appeal between *Powel* and one *Rob. Coleman*, had remanded the Cauſe, and condemned the Plaintiff in 4*l.* 10*s.* Coſts, *legitimæ aſſes*: And had moniſhed it to be paid at *Candlemas* following; and upon the 21 *Nov.* 1612, had awarded Proceſs of Monition to warn him to pay it on the ſaid *Candlemas* Day, upon Pain of Excommunication, which upon the 10 *December*, 10 *Jac.* was delivered to the Defendant, being an Officer of the ſaid Court, to execute; and that the Defendant upon the 12 *Feb.* 10 *Jac.* falſly returned before Dr. *Maſters*, Surrogate of the Official, that he moniſhed him, upon the 17 *Dec.* 1612, whereas he never was ſo warned; whereupon he was pronounced Excommunicate, whereby he was diſabled to ſue; and therefore brought this Action. The Defendant pleaded, that he moniſhed him the 17 *Sept.* 1610, and ſo miſtakes both the Month and the Year; and it was thereupon demurred; and now the Defendant ſhewed that an Action of the Caſe lied not; becauſe this being a Spiritual Proceſs, a Court Temporal cannot puniſh the Falſhood in the Execution thereof: But all the Court held it was well enough; for he is thereby to have Temporal Loſs, *viz.* to be thereby diſabled to proſecute Temporal Suits, and put to much Expence; and therefore the Action well lies. 2*dly*, It was objected, that the Declaration was not good, becauſe it

was not ſhewed in what Cauſe the Suit of Appeal was, ſo as the Court might know whether they have Juriſdiction thereof; for if it be in a Cauſe whereof they have not Juriſdiction, then it is *coram non judice*; and ſo there cannot be any Loſs by Reaſon thereof. 3*dly*, It was objected, that it doth not appear that Dr. *Maſters*, before whom the Monition was returned, and who awarded the Excommunication, had Authority: But all the Court held, that notwithſtanding theſe Exceptions, the Declaration was good; for theſe Spiritual Juriſdictions and Proceedings need not be ſhewed at large, eſpecially as this Caſe is; for it was but an Inducement to the Action, the Wrong and falſe Return being the Ground thereof; and particularly that the Taxation of the Coſts and Sentence were lawful, the particular Proceeding need not be expreſſed: Wherefore it was adjudged for the Plaintiff. *Quære the Authority.*

3. *Trin.* 9 *Geo.* 2. *Huddleſton* and *Eyres.* In an Action againſt a Chancellor of a Dioceſe for taking undue Fees for Marriage Licences, Serj. *Draper* moved for Liberty to inſpect the Publick Books of the Dean and Chapter of *Wells*. The other Side pretended an excluſive Right in the Dean and Chapter. Rule to ſhew Cauſe went.

3. *Where*

5. *Where they act unjuſtly in general.*

1. *How puniſhed.*

1. AS to the Caſes in which inferior Judges, *as are Eccleſiaſtical Judges*, are puniſhable for acting unjuſtly, oppreſſively, or irregularly, as Mr. Serjeant *Hawkins* in his *Pleas of the Crown* ſays, it is not eaſy to meet with Caſes of this Kind in the Books; there being ſeldom any Thing in them ſo remarkable as to be thought worth reporting; but it ſeems to be a common Practice to grant Attachments, againſt the Judges of ſuch Courts, for any Practice contrary to the plain Rules of natural Juſtice; tho' it hath been never ſo long ruled in ſuch Courts. *Hawk. Pl. Cro. Attachment*, 6. *ſect.* 26.

No Chancellor, Commiſſary, Archdeacon, Official, or any other Perſon Eccleſiaſtical, having Juriſdiction whatſoever, ſhall ſpeed any judicial Acts either of Contentious or voluntary Juriſdiction, except he have the Ordinary Regiſter of that Court, or his lawful Deputy; or if he or they cannot or will not be preſent, then ſuch Perſons, as by Law are allowed in that Behalf, to write or ſpeed the ſame, under Pain of Suſpenſion *ipſo facto*. *Can.* 123. Eccleſiaſtical Judges and Miniſters, their Seal, *&c.* *Can.* 124.

6. *Where they proceed without Juriſdiction.*

1. IN what Caſes inferior Judges are puniſhable for proceeding without Juriſdiction; it ſeems that the Court of King's Bench, *and the ſame I take it to be of the other Superior Courts of Weſtminſter-Hall*, having a general Superintendency over all Inferior

Inferior Courts, may in Strictneſs award an Attachment againſt any ſuch Court, *and Eccleſiaſtical Courts are, I hold, of theſe Inferior Courts*, uſurping a Juriſdiction no Way belonging to it, and putting the Subject to unneceſſary Vexation, by Colour of a Judicial Proceeding, wholly unwarranted by Law; and therefore prohibited by it; yet in theſe Caſes, as Mr. Serjeant *Hawkins* ſaith, it ſeems to be the more uſual Way, firſt to award a Writ of Prohibition to ſuch Court, and afterwards an Attachment, upon its Proceeding after ſuch Prohibition, and not to grant a Rule to ſhew Cauſe why an Attachment ſhould not go, in the firſt Inſtance, unleſs there be ſome extraordinary Circumſtances in the Caſe, &c. ſo as it ſeems to be wholly in the Diſcretion of the Court to grant either. *Hawk. Pl. Cr. Attachment, Sect.* 25.

2. 1ſt, The Ordinary cannot conſtrain any Eccleſiaſtical or Temporal Perſon to ſwear generally, to anſwer to Interrogatories, to be adminiſtred to him; but that he muſt have them delivered to him, that he may conſider whether he ought by Law to anſwer them, or not. 2dly, That no Man whatſoever ſhould be examined to his ſecret Opinion, and no Layman but in Caſes matrimonial or teſtamentary; for as a *Civilian* ſaid, this was *Inventio Diaboli ad deſtruendas Miſerorum Animas ad infernum*; in a Word Lord *Coke* ſays, this was not only againſt the Ordinance mentioned by his Lordſhip, and in *Raſt.* but alſo againſt the Cuſtom of the Realm, and not only ſo, but in Prejudice of the Crown and Dignity of the

King, wherewith agrees *Fitzh. N. B.* 41. See 12 *Co.* 26, 27.

3. The Biſhop may not examine the Parties on their own Oaths, againſt their Wills, to endanger their Lives, or hurt their good Names; for the intolerable Inconveniences, (of which the poor Martyrs in the cruel and bloody Reign of Queen *Mary*, and other preceding Reigns, at the Inſtigation of a cruel, bloody and perſecuting Clergy, were miſerable Inſtances.) See 12 *Co.* 27, 28.

4. The Stat. of *Præmunire* inflicts a Puniſhment, as well on the Judge, as the Party. See 10 *H.* 4. 164. If one libel in the Admiralty of a Thing done on Land, and it appears upon the Libel to done on Land, and they notwithſtanding hold Plea of it, a *Præmunire* lieth, as is 2 *Leon.* 182, 183.

And the Law is the very ſame in the Eccleſiaſtical Court, where the Matter appears, on the Face of the Libel, to be of Common Law Cognizance; and the Reaſon is becauſe, with full Knowledge, they act in Diſinheriſon of the Crown, and in Derogation of his Majeſty in his Superior Temporal Courts. As falling within the like Reaſons of Diſloyalty to his Majeſty and Derogation of the Superior Common Law, I cannot doubt it is, That if a Biſhop, Provincial, or Dioceſan, or other inferior Ordinary, or any their Officials, ſhall preſume to viſit an Impropriation, Donative, Free Chapel *De l'Roy*, or of the Grantee thereof, Church, Chapel, or any their Miniſters, Clerks, or Curates of any ſuch Church or Chapel, School, Alms-houſe, Hoſpital, or any other Charity whatſoever cogniſable at Law as a Lay Fee, and viſitable by the Crown, or Lord Chancellor, as Viſitor for the Crown, or by the Founder and his Heirs, or other Viſitor by the Nomination, Appointment and Deſignation of ſuch Founders, or natural Viſitors, and their Heirs, with full Notice of ſuch Exemptions, incurs a *Præmunire*, for the clear Reaſon aforeſaid, as well as upon the Conſtruction of the Statutes of *Præmunire*, on the Words, *vel alibi*, as well as otherwiſe.

7. *Where-*

7. *Where they either refuſe or neglect to do their Duty.*

1. *How puniſhed*, &c.

1. THE Party may have an Attachment againſt the Judge, if he refuſe to receive the Prohibition, and to admit it. *Fitzh. N. B.* 40.

2. If on a Prohibition ſued to any Spiritual Court, the Judges will not receive or allow it, and becauſe he brings the Prohibition they make a Citation, againſt the Party to anſwer before them for the ſame; now he ſhall have a new Prohibition upon the Matter directed to the Judges, and he ſhall alſo have an Attachment thereupon; if they proceed againſt him in their Court; and it is immaterial, whether the Prohibition were ſued lawfully, or erroneouſly; for that he ſhall not be puniſhed for ſuing a Prohibition in the King's Court. *Fitzh. N. B.* 41. (H.) 42. (G.)

3. The King recovered his Preſentment to a Church, and had his Writ to the Biſhop, *&c.* to remove the Incumbent of the other; whereupon the Incumbent appeals to the Archbiſhop, *&c.* Whereupon the Archbiſhop inhibits the Biſhop not to admit the King's Clerk, pending the Appeal, *&c.* the King ſhall have a Writ directed to the Archbiſhop and his Officers to remove his Inhibition, and that he do, nor ſuffer to be done, nothing that ſhall be in Derogation

of the Crown, or the Right thereof. And he may have another Writ againſt the Incumbent, that he do not ſue ſuch an Appeal, &c. or other Proceſs or Impediment, and alſo he may have an Attachment againſt ſuch Incumbent, if he purſue after ſuch Prohibition, &c. *Fitzh. N. Br.* 43. *a.*

4. If one be ſued in Court Chriſtian, and the Judges will not grant the Defendant a Copy of the Libel, he ſhall have a Prohibition to them to ſurceaſe, &c. till they have delivered a Copy of the Libel, according to the Statute 2 *H.* 5. and alſo the Defendant, if he pleaſes, may have an Action againſt them *ſur le Statute*, if they will not deliver to him a Copy of the Libel; and that whether the Cauſe of the Libel be Spiritual, or not. *Fitzh. Nat. Br.* 43. E.

5. In what Caſes inferior Judges are puniſhable for refuſing to do Juſtice, and how to be enforced thereto, ſee *Hawk. Pl. Cor. Attachment, Sect.* 27.

8. *Where they exceed their Juriſdiction.*

1. *How puniſhed.*

1. IF the Eccleſiaſtical Judges or Magiſtrates exceed the Bounds of their Reception, in this Realm, by extending themſelves to other Matters, or further, than has been allowed them; or if they proceed according to their own Law, when that Law is controuled by the Superior Common

Common Law, the Common Law may prohibit and puniſh them. *Ha. Hiſt. Law* 27, 28, 29. *Vide* from whence derived, from the Common Law, *&c.*

2. When the Eccleſiaſtical Courts exceed their Limits, the Courts of Law will not only reſtrain them; but alſo puniſh both the Judge who pronounces the Sentence, and the Officer who executes it; and that at the Suit of the King, or at the Suit of the Party, and ſometimes at the Suit of both, according to the Variety and Circumſtances of the Caſe. *Doct. & Stud. lib.* 2.

3. One may ſue a Prohibition to the Sheriff, That he ſuffer not the King's Lay Subjects to come to any Place at the Citation of the Ordinary, *ad faciend. aliquas negotiones vel Sacramen. præſtand. niſi in Cauſis Matrimonialibus & Teſtamentariis*, and the Party may thereupon have an Attachment againſt the Biſhop, in Caſe he cite, or diſtrain any one to appear before him, or to take an Oath againſt his own Will; from whence it appeareth, that theſe general Citations, whereby Men are cited by the Biſhop to appear before him, *pro ſalute Animæ*, without ſetting forth the Cauſe, are *contra Legem*, and the Party may have an Attachment againſt the Biſhop for ſo doing, *&c. Fitz. N. B.* 41. A.

4. Prohibitions are directed either to the Judge or Party, or both, and if they exceed their Juriſdiction, the Officer who executes their Sentences, and the Judge who pronounces it, are both puniſhable in the Superior Courts of the Common Law at the

Suit of the King, or of the Party, or both. *Ha. Hiſt. Law* 41, 42.

5. If one ſue in Court Chriſtian for Chattel, or Debt, a Prohibition lies to the Court, and another to the Party, that he purſue it not, and the King in ſuch Caſe might ſue a Prohibition and alſo an Attachment *ſur ceo*. *Fitz. N. B.* 40. (H). The ſame Law of Suit for Lay Fee, which is Lands, Tenements, or the like, and the Attachment may be againſt either Judge, or Party, or both, at the Election of the Party who will ſue it. And if the Judge be in one County, and the Party in another, and the Party is diſpoſed to ſue againſt both, he muſt ſue out two Writs; and ſo if there be ſeveral Prohibitions, there ought to be ſeveral Attachments, if he will ſue againſt both, and that tho' they both live in the ſame County. *Fitzh. N. B.* 40. I. K. If a Man ſue another for Treſpaſs, in Court Chriſtian, the King, or Party, may have a Prohibition and Attachment againſt both, or either Judge, or Party. *Fitz. N. B.* 40. M. 41. I. K.

6. It appears by the Regiſter, That a common Perſon, who recovers his Preſentation, or hath Title to preſent, ſhall have a Prohibition to the Judges Spiritual, or to the Party that he do not proceed, or purſue, and alſo an Attachment, if they proceed or purſue after; and where the Clerk of the King is in Poſſeſſion by ſuch Recovery, and is diſturbed by any Perſon by Force of Arms, that he cannot take his Tithes and Profits of his Church, he ſhall have

have a ſpecial Commiſſion directed to the Sheriff, or other Officer of the King, to take ſuch Perſons, as well within Liberties as without, and to carry them to Gaol, there to remain till the King's further Pleaſure. And if the King recover his Preſentment and hath a Writ to the Biſhop, and his Clerk is thereupon inſtituted and inducted; now if the Biſhop, at the Suit of another, cited the King's Incumbent to the Court of *Rome*, or elſewhere, out of the Realm, then the King ſhall have a Prohibition directed to the Biſhop, that he neither cite, nor cauſe ſuch Incumbent to be cited, *&c.* and alſo he may have an Attachment. And he may have this Prohibition without any Recovery if his Clerk be inſtituted, *&c.* The ſame of a common Perſon, when the Suit is to try the Title of Preſentment or Collation. *Fitzh. Nat. B.* 43. B. C.

7. In Places where the Biſhop and the Archdeacon do by Preſcription, or Compoſition, viſit at ſeveral Times in one and the ſame Year; leaſt, for one and the ſelf-ſame Fault, any of his Majeſty's Subjects ſhould be challenged and moleſted in divers Eccleſiaſtical Courts, we Order and appoint, that every Archdeacon, or his Official, within one Month after the Viſitation ended that Year, and the Preſentments received, ſhall certify under his Hand and Seal to the Biſhop, or his Chancellor, the Names and Crimes, of all ſuch as are detected and preſented in his ſaid Viſitation; to the End the Chancellor ſhall from thenceforth forbear to convene any Perſon for any Crime, or

Cauſe to be detected or preſented, to the Archdeacon: And the Chancellor, within the like Time, after the Biſhop's Viſitation ended, and Preſentment received, ſhall under his Hand and Seal ſignify to the Archdeacon, or his Official, the Names and Crimes of all ſuch Perſons, who ſhall be detected or proſecuted, unto him in that Viſitation; to the ſame Intent as aforeſaid: And if theſe Officers ſhall not certify each other, as is here preſcribed; or after ſuch Certificate ſhall intermeddle, with the Crimes or Perſons detected and preſented in each other's Viſitation; then every of them, ſo offending, ſhall be ſuſpended from all Exerciſe of his Juriſdiction, by the Biſhop of his Dioceſe; until he ſhall repay the Coſts and Expences, which the Parties grieved have been at by the Vexation. *Can.* 121.

9. *Where they proceed, notwithſtanding the Prohibition, or Command of the Temporal Courts to ſurceaſe, or other Interpoſition of the Temporal Courts to ſuch End.*

1. A Judge prohibited may not proceed without Danger of an Attachment. 2 *Inſt.* 610. Vide *Fitzh. Nat. Brev.* 41. A. *Doct. & Stud. lib.* 2. *cap.* 32.

2. A Prohibition was granted, and after an Attachment againſt the Biſhop, and Official too, for holding Plea after Prohibition. 3 *E* 1. *Rot. Clauſarum. M.* 10. *Rol. Abr. Prohibition. A. Caſe* 1.

3. A

3. A Judge of a Spiritual Court may be puniſhed, by Attachment or at the Diſcretion of the Superior Temporal Courts, for proceeding in a Cauſe after Notice of a Rule to ſhew Cauſe why a Prohibition ſhould not go. *Hawk. Pl. Crown, Attachment, Sect.* 28.

VIII. *They may not buy or ſell their Places.*

1. THE Stat. 5 *E.* 6. provided againſt ſelling of Offices, *&c.* extendeth as well to Eccleſiaſtical Offices, as Temporal, which concerns the Adminiſtration of Juſtice; and it was reſolved in the Caſe of Doctor *Trevor*, Chancellor of a Biſhop in *Wales*, that the Office of Chancellor and Regiſter of a Biſhop are within that Statute; for that they concern the Adminiſtration of Juſtice. 2 *Inſt.* 148.

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C.

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I. *Convocation.*

1. *What, and wherefore so called.*

1. HAving *taken a general View of the Ecclesiastical Courts, their Magistrates or Judges, and Officers, I conceive it may be proper now to be somewhat particular, and to consider them severally, before we go to the Particulars of the Subordination, Inferiority, and Subjection of these Courts to the Superior Temporal Courts. And first, I hold it not immethodical to begin with the Court of Convocation, which is commonly taken for the Assembly of all the Clergy congregated to consult of Ecclesiastical Matters.*

2. Convocation, it is called *a Convocando*, because they are called together by the King's Writ. 4 *Inst.* 323.

3. Convocation of the Clergy, called *Magna servorum Dei frequentia.* 4 Inst. 322.

4. It is called the Convocation of the Clergy in *England*, there being two Provinces, *Canterbury* and *York*. The Biſhops and Suffragans belonging to *York*, are the Biſhops of *Durham*, *Carliſle*, *Cheſter*, and the *Iſle of Man*, and all the reſt are within the Province of *Canterbury*. 4 *Inſt.* 322. tho' formerly the Biſhop of *Canterbury* had more Suffragan Biſhops.

2. *When, and how, aſſembled.*

1. THEY never aſſemble but by the King's Writ *adjutoria Regis*, as *Beda* ſaith. *Vide* 4 *Inſt.* 322. See *Law Terms* and *Blo. Law Dict.* Tit. *Convocation.* 12 *Co.* 72.

3. *Of what they conſiſt, and when they ſit.*

1. IN *Domo Convocationis*, the whole Clergy of either Province are either preſent in Perſon, or by Repreſentation; and they only ſit in Parliament-Time; and they conſiſt of two Parts; the upper Houſe, where the Archbiſhops and Biſhops ſit, and the Lower Houſe, where the reſt ſit. 4 *Inſt.* 322.

2. As there are two Houſes of Parliament; ſo are there two Houſes of Convocation, the one called the higher Convocation Houſe, where ſit all the Archbiſhops and Biſhops by themſelves; the other called the lower Convocation-Houſe, where all the reſt of the Clergy ſit, *viz.* all the Deans, Archdeacons, one Proctor for every

Chapter, and two Proctors for all the Clergy of each Dioceſe, in all about 166 Perſons, *anno* 25 *H.* 8. *cap.* 19. *Blo. Law Dict. Convocation.*

4. *Their Prolocutors.*

1. *The Sorts.*

1. AS there are two Houſes of Convocation; ſo are there two Prolocutors, one of the Biſhops, at the Higher Houſe, choſen by them; and another of the Lower Houſe, and preſented to the Biſhops, for their Prolocutor. 4 *Inſt.* 323.

2. *The Office.*

The Prolocutor's Office is to cauſe the Clerk, to call the Names of ſuch as are of that Houſe, when he ſees Cauſe. To cauſe all Things propounded to be read to him. To gather the Suffrages, *&c. Cow. Interp.* and *Blo. Law Dict. Prolocutor.*

5. *Their Proctors.*

1. *What, and how elected.*

1. PRoctors of the Clergy, *Procuratores Cleri*, are thoſe who are choſen and appointed to appear for Cathedral, or other Collegiate Churches; as alſo for the common Clergy of every Dioceſe, to ſit in Convocation

vocation in Parliament-Time. *Blo. Law Dict. Proctors.* See 4 *Inſt. fo.* 4. *Cowel's Interp. Proctors of the Clergy.*

2. As to the Manner of electing theſe Proctors, and their Choice, it is in this Sort: Firſt, the King directs his Writ to the Archbiſhop of each Province, for the Summoning of all Biſhops, Deans, Archdeacons, Cathedral and Collegiate Churches, and generally of all the Clergy of his Province, after their beſt Diſcretion and Judgment, aſſigning them the Time, and Place, in the ſaid Writ. Then the Archbiſhops proceed, in their accuſtomed Manner. To take one Example for both; the Archbiſhop of *Canterbury*, on his Writ received, directed his Letters, to the Biſhop of *London*, as his Dean Provincial; Firſt citing himſelf peremptorily, then willing him in like Manner to cite all Biſhops, Deans, Archdeacons, Cathedral and Collegiate Churches, and generally all the Clergy of his Province, to the Place, and at the Time in the Writ, but directeth with all: That one Proctor for each Chapter, and two for the Body of the inferior Clergy, may ſuffice, and by Virtue of theſe Letters, the Biſhop of *London*, directs his Letters, to the ſeveral Biſhops of the Province, citing them in like Sort, and commanding them not only to appear, but alſo to admoniſh the ſaid Deans, and Archdeacons, perſonally to appear; and the Cathedral and Collegiate Churches, and other Clergy to ſend their Proctors, and to certify their Names to the Archbiſhop, *&c. Cow. Interp. Proctors.*

6. *The Juriſdiction of this Court.*

1. *Of what Matters they have Juriſdiction.*

THeir *Juriſdiction* was to deal with Hereſies, Schiſms, and other meer Spiritual Cauſes. 4 *Inſt.* 322.

2. *Their Juriſdiction is but limited.*

1. As they could never aſſemble themſelves together, but were always called together by the King's Writ; ſo were they often commanded by the King's Writ to deal with nothing that concerned the King's Laws of the Land, his Crown and Dignity, his Perſon, or other State of his Council, or Kingdom. *Vide* ſome Examples, 4 *Inſt.* 322, 323. 12 *Co.* 26, 27, 28, 29.

2. By the Stat. 25 *H.* 8. Their Juriſdiction and Power is much limited and ſtreightened, concerning their making of new Canons; for they muſt have both Licence to make them, and after they are made, the King's Royal Aſſent to them, before they can be put in Execution, *&c.* 4 *Inſt.* 323. 12 *Co.* 26, 27, 28, 29, 72. *Vaug. Rep.* 329.

3. The King often appointed Commiſſioners by Writ to ſit with them at the Convocation, and to have Cognizance of ſuch Things, as they meant to eſtabliſh, that nothing ſhould be done in Prejudice; (*ut ſuprà*) and therefore the Statute 25 *H.* 8. *c.* 19. (whereby it is provided) that no Canons, Con-

Conſtitutions, or Ordinances, ſhould be made, or put in Execution, within this Realm, by Authority of the Convocation of the Clergy, which were contrariant, or repugnant to the King's Prerogative Royal, or the Cuſtoms, Laws, and Statutes of this Realm, is but declaratory of the old Common Law. 4 *Inſt.* 323. 12 *Co.* 26, &c. 72.

4. Convocation, nor their Canons cannot alter or infringe the Common Law, Statute Law, or the King's Prerogative; and in making new Canons they muſt confine themſelves to Church Matters; and no Canon Law can be made, which is repugnant to the Law of the Land. 2 *Vent.* 44.

5. If a Canon be made Part of the Law of the Land, then it is as much the Law of the Land, and by the ſame Authority, as any other Law of the Land; but if it be not the Law of the Land, then hath it no more Effect than a Law in *Utopia*; therefore the Common Law in Force here is the Law of the Land. *Vaug.* 21.

7. *How they proceed.*

THey proceed in Matters of their Dealing *juxta Legem Divinam, & Canones Sanctæ Eccleſiæ.* 4 Inſt. 322. *But it was not always ſo; for before the Eccleſiaſtical Juriſdiction ſevered from the Sheriff's Tourn, it was otherwiſe; their Proceedings were the ſame, as well as their Trials, with the Temporal Matters tried in the Tourn,* viz. *by Jury.*

8. *Appeals.*

8. *In what Caſes, and in what Time to be brought.*

1. IF any Cauſes ſhall depend in Contention in any Court Eccleſiaſtical, which may or ſhall touch the King, his Heirs, or Succeſſors, the Party grieved ſhall or may appeal to the upper Houſe of Convocation, within fifteen Days after Sentence given. 4 *Inſt.* 323.

2. *Item*, Where the Matter toucheth the King, the Appeal within the fifteen Days, to be made to the Higher Convocation-houſe of that Province. 4 *Inſt.* 339, 340.

9. *The Privileges of Convocation.*

1. THE Clerks of the Convocation, called by the King's Writ, and their Servants, and Families, ſhall have ſuch Privileges in coming, tarrying, and going, as the great Men and Commonalty of this Realm, called to the King's Parliament. 4 *Inſt.* 323. *Vide* 8 *H.* 6. *c.* 1.

2. Dr. *Warry*, being a Member of Convocation, had his Privilege allowed him. 3 *Rep. in Chanc.* 38, 39.

II. *Arch-*

II. *Archbiſhops and Biſhops.*

1. *Their Authority and Juriſdiction.*

1. *Whereto it extends.*

1. THE Archbiſhop cannot originally have Juriſdiction of a Cauſe, ariſing in another Dioceſe, within his Province, both as it is againſt the Stat. 23 *H.* 8. and alſo the Party hath a Sort of Wrong thereby, and as it deprives the Subject of an Appeal, which he ſhould have had, if the Cauſe had began with the inferior Ordinary. See *Hob.* 17. and *Bro. Abr.* Tit. *Prohibition.*

2. *Their Courts.*

1. *General to.*

1. TO Archbiſhops belong their Courts of Audience, Prerogative Courts, and Courts of Arches. To Biſhops their ſeveral Conſiſtories and Chanceries, their Chancellors, &c. *Ha. Anal.* 32.

2. *Court of Arches.*

1. *What it is; from whence denominated, and its Antiquity.*

ARches Court, *Curia de Arcubus*, is the chief and ancienteſt Conſiſtory that belongs to the Archbiſhop of *Canterbury*, for debating Spiritual Cauſes, and is ſo called from *Bow-Church* in *London* (dedicated to the Bleſſed Virgin) where it was kept; and the Church is ſo called of the Faſhion of the Steeple, or *Clochire* thereof, whoſe Top is raiſed upon Stone Pillars built Archwiſe, like ſo many bent Bows. *Bla. Law Dict. ſub hoc Tit.*

2. *The Judges of.*

1. *Who is; from whence called; where he holds his Court, and of his Juriſdiction, and whereto it extendeth, and the Method of Proceeding in it.*

1. THE Judge of this Court is termed the Dean of the Arches, or Official of the Arches Court. Dean of the Arches, becauſe with his Officialty is commonly joined a peculiar Juriſdiction of thirteen Pariſhes in *London*, termed a Deanery, being exempted from the Authority of the Biſhop of *London*, and belonging to the Archbiſhop of *Canterbury*, of which the Pariſh of *Bow* is one and the Chief, becauſe the Court was there

there kept. *Blo. Law Dict.* ſub Tit. *Arches Court.*

2. The Dean of the Arches is, as ſome hold, ſo called, becauſe he is Subſtitute or Official to the Archbiſhop, his Grace being many Times employed abroad in Embaſſages for the King and Realm. *Cow. Interp. Arches Court.*

3. The Judge of the *Court of Arches* is called the Dean of the Arches, unto whoſe Officialty in Spiritual Cauſes to the Archbiſhop of *Canterbury* is annexed the peculiar Juriſdiction of thirteen Pariſhes. He hath ordinary Juriſdiction in Spiritual Cauſes of the firſt Inſtance, and by Appeal thro' the whole Province of *Canterbury*, as appeareth by the Statute of 24 *H.* 8. *c.* 12. His Power to call any Perſon, for any Cauſe, out of any Part of his Province in the Dioceſe of any other, unleſs on Appeal, is reſtrained by Stat. 21 *H.* 8. *cap.* 9. 4 *Inſt.* 337.

4. This Court of the Arches in the Stat. 25 *H.* 8. *cap.* 19. is called the Court of the Arches, or Audience of the Archbiſhop of *Canterbury.* 4 *Inſt.* 337.

5. The Court of the Arches of the Archbiſhop of *Canterbury*, called *Curia de Arcubus*, hath been anciently holden in *Bow-Church*, and I read of it (ſaith Lord *Coke*) in a Record of a Prohibition. *Term. Hil. coram Rege, Anno* 7 *E.* 1. *Rot.* 8. *in Curia Chriſtianitatis coram Decano de Arcubus London* of *Bow-Church* in *London*, where the Court hath conſtantly been kept, which and twelve other Pariſhes in *London*, whereof *Bow* is the Chief, are within the peculiar Juriſdiction, in Spiritual Cauſes, of the Archbiſhop of *Can-*

Canterbury, and exempt from the Bishop of *London*. 4 *Inst.* 337.

6. The Jurisdiction of the Judge is ordinary, and extends it self through the whole Province of *Canterbury*; so that upon any Appeal made, he forthwith, and without any further Examination of the Court, sends out his Citation to the Appellee, and his Inhibition to the Judge from whom the Appeal was made. *Blo. Law Dict.* sub Tit. *Arches Court.*

3. *Appeals from it; whereto.*

1. *To the King.*

FRom this Court of the Arches the Appeal is to the King in Chancery by the said Act 25 *H.* 8. 4 Inst. fo. 337. *And* Quære *if this Act of* Hen. 8. *is not in Affirmance of the ancient Common Law, and the Prerogative Royal, as I conceive it to be.*

3. *Court of Audience.*

1. *What, and where kept.*

THE Court of Audience (*Curia Audientiæ Cantuariensis*) is also a Court belonging to the Jurisdiction of the Archbishop of *Canterbury*, of equal Authority with the Arches; tho' inferior both in Dignity and Antiquity, and is held in the Archbishop's Palace; of which you may see more in

n a Book, intitled, *De antiquitate Eccleſiæ Britanicæ Hiſtoriæ*, and in 4 *Inſt.* 337.

2. *Of what Matters hath Cognizance.*

The Court of Audience, *Curia Audientiæ Cantuarienſis* is kept by the Archbiſhop in his Palace, as hath been ſaid, and meddleth not with any Matter between Party and Party of Contentious Juriſdiction, but dealeth in Matters *pro forma*, as Confirmations of Biſhop's Elections, Conſecrations and the like; and with Matters of voluntary Juriſdiction, as the Granting of the Guardianſhip of the Spiritualties *Sede vacante* of Biſhops, Admiſſion, and Inſtitution to Benefices, Diſpenſing with Banes of Matrimony, and ſuch like. 4 *Inſt. fo.* 337.

3. *This Court not to oppreſs the Subject.*

Whereas the Dioceſe of *Winton* extends to *Southwark*, as Part of the County of *Surrey*, and the Judge of the Audience of the Archbiſhop of *Canterbury* holds a Court ſometimes in *Southwark*, and cites Men there, being a remote Part of the Dioceſe of *Winton*, being ſixty Miles, and if they do not appear to excommunicate them, and will not abſolve them, unleſs they will conſent to tranſmit the Cauſe to the Archbiſhop's Court, by which the Statute 28 *H.* 8. was eluded, a Prohibition lies, tho' it be concerning the Juriſdiction of two Spiritual Perſons; for that the King ought to keep every

every Court within its Bounds. And tho' it had been formerly conceived, that the Archbiſhop had a concurrent Juriſdiction within every inferior Dioceſe; yet that was not as he was Archbiſhop, but as he was *Legatus natus* to the Pope; (for the Archbiſhop of *York* neither has, nor claimeth it in his Archbiſhoprick) and then his Power is ended, being abrogated with the Pope; and the laſt Practice, if any ſuch were, was an Uſurpation. And if the Archbiſhop of *Canterbury* ſhould be admitted to erect an Audience in every Dioceſe, he might take away all Cauſes out of inferior Courts. Ro. *Abr. Prohibition, fo.* 313, 314. Caſe 8. *Hob.* 17. *le meſme Caſe.*

No Dean of the Arches nor Official of the Archbiſhop's Commiſſary, nor any Judge of the Audience ſhall, in his own Name, or in the Name of the Archbiſhop, either *ex Officio*, or at the Inſtance of any Party, originally cite, ſummon, or any Way compel, or procure to be cited, ſummoned or compelled any Perſon which dwelleth not within the particular Dioceſe, or Peculiar of the ſaid Archbiſhop to appear before him, or any of them, for any Cauſe or Matter whatſoever belonging to Eccleſiaſtical Cognizance, without the Licence of the Dioceſan firſt had and obtained in that Behalf, other than in ſuch particular Caſes only as are expreſly excepted and reſerved in and by the Statute 23 *Hen.* 8. *cap.* 9. And if any of the ſaid Judges ſhall offend herein, he ſhall, for every ſuch Offence be ſuſpended from the Exerciſe of his Office for the Space of three whole Months. *Can.* 94.

4. *The Prerogative Court.*

1. *What it is, and its Office.*

1. THE Prerogative Court of the Archbiſhop of *Canterbury*, *Curia Prærogativa Archiepiſcopi Cantuarienſis*, is the Court where all Teſtaments are proved, and all Adminiſtrations granted, where the Party dying

dying within his Province hath *Bona notabilia* in ſome other Dioceſe than where he dieth, which regularly is to be to the Value of five Pounds, but in the Dioceſe of *London* it is ten Pounds by Compoſition. 4 *Inſt.* 335.

2. The Biſhops, Lords, and Commons aſſented 16 *R.* 2. That the King, his Heirs and Succeſſors, might lawfully make their Teſtaments, and that Execution ſhould be done of the ſame, whereof my Lord *Coke* ſays, ſome Doubt was made before. See *Parl. Roll* 1 *H.* 5. N° 13. The Teſtament of King *Hen.* 4. and his Executors refuſed, the Archbiſhop of *Canterbury* was to grant Adminiſtration with the Teſtament annexed. 1 *Hen.* 6. N° 18. The Laſt Will and Executors of *H.* 5. 10 *H.* 6. N° 27. 4 *Inſt. fo.* 335.

3. The Archbiſhop of *York* hath the like Prerogative Court as the Archbiſhop of *Canterbury.* 4 Inſt. 335. *but it is called his Exchequer.*

4. Prerogative Court (*Curia Prærogativa Archiepiſcopi Cantuarienſis*) the Court wherein all Wills are proved and all Adminiſtrations granted that belong to the Provincial's Juriſdiction, where in Caſes of Contention touching ſuch Wills, or Adminiſtration, the Cauſe is properly debated and determined in this Court, the Judge whereof is called the Judge of the Prerogative Court of *Canterbury.* The Archbiſhop of *York* hath alſo the like Court, which is termed his Exchequer; but is far inferior to this both in Power and Profit. *Blo. Law Dict.* and *Cow. Interp.* Tit. *Prerogative Court.*

5. If

5. If a Man die Inteſtate, having *Bona notabilia* in divers Dioceſes, the Judge of this Court (*the Prerogative*) hath uſed to aſſeſs a convenient Sum to be imployed *in pios uſus*; but with theſe Limitations: 1ſt, It muſt be after Adminiſtration granted and the Inventory made and returned, to the End the Eſtate of the Inteſtate may be known. 2dly, The Adminiſtrator before any Aſſeſſment, muſt be called to it, to the Intent the Judge may be informed of the true State of the Inteſtate and of his Children and Kindred, for whoſe Succour and Relief there is great Piety. 3dly, The Aſſeſſment muſt be particular, as how much, to whom, and to what uſe. 4thly, There muſt a publick Act be made of it before any Payment made. 5thly, Payment muſt be made according to the Act. And laſtly, The Judge ought not directly, nor indirectly, to take any Thing thereof to his own Uſe, nor for the Aſſeſſment thereof, neither for the Entring the publick Act, and if he doth, it is Extortion; and Term. *Mich.* 2 *Jac. R.* Sir *John Bennet*, Judge of this Court, for not obſerving theſe Rules, was ſentenced in the *Star-Chamber for Extortion*, and fined 20000 *l*, impriſoned, and diſabled ever after to bear any Office, as by the Sentence appeareth. The ſame Rules are to be obſerved upon Aſſeſſments *ad pios uſus* in Caſes of Adminiſtration, which, Lord *Coke* ſays, may ſerve for the Direction of all the Ordinaries and Judges in Eccleſiaſtical Courts in *England*. 4 Inſt. 336.

6. There was an Act made *Anno* 21 *H.* 8. *c.* 5. concerning Fees for Probate of *Laſt Wills*

Wills and Teſtaments, and granting of Adminiſtrations. 4 *Inſt.* 336. See *Extortion*, *Probates of Wills, and Adminiſtrations*, *Bona notabilia*, &c. *Vide etiam Stat.* 31 *E.* 3. *c.* 11. *Stat.* 22 & 23 *Car.* 2. and 1 *Jac.* 2. *c.* 17. 4 & 5 *Ann. c.* 16. *ſect.* 26. *Cay's Abr. Stat. Tit. Adminiſtrator and Probate.*

2. *Appeals from; whereto.*

1. *To the King in his Chancery.*

FRom this Court the Appeal is to the King in Chancery. 4 *Inſt.* 335.

5. *The Court of Peculiars.*

1. *What.*

THE Court of Peculiars, *Curia Peculiarum.* The Archbiſhop of *Canterbury* hath a peculiar Juriſdiction in divers Pariſhes within the City of *London* and other Dioceſes, &c. 4 *Inſt.* 338.

2. *The Sorts.*

HOLT Chief Juſtice ſaid, there are three Sorts of Peculiars. 1ſt, Which is, when the Archdeacon, &c. hath a Peculiar within the Dioceſe, and ſubject to the Juriſdiction of the Ordinary. 2dly, When one hath a Peculiar not ſubject to the Ordinary, but to the Archbiſhop. And the Third is, when one hath a peculiar Subject neither

neither to the Ordinary nor to the Archdeacon. And his Lordſhip further ſaid, that tho' the Dean of *Sarum* is to ſome Purpoſes ſubject to the Juriſdiction of the Biſhop; yet, as to this particular, it is all one as if it were in a Stranger, and is not in the Juriſdiction of the Biſhop of *Sarum*. Skin. 589. *Vide le Caſe.*

3. *Subordinate Peculiars.*

1. *Who hath the Juriſdiction.*

1. IF a Peculiar be ſubordinate to the Biſhop, then he cannot refer a Cauſe to the Archbiſhop, but to the immediate Ordinary, as an Archdeacon, or Commiſſary muſt do; otherwiſe it is, if the Peculiar have his immediate Reſort to the Archbiſhop; but if the Peculiar be free, by a general Exemption, from all ordinary Juriſdiction, which was common in the Caſe of Monaſteries (both by Grants of Kings and Popes) then the Cauſe muſt be remitted to the King, as Appeals muſt alſo be in ſuch Caſes; and ſo it is provided by the Stat. 25 *H.* 8. *c.* 21. *Hob.* 186, 187. *Cro. Car.* 97.

2. It was moved by a Serjeant, that in the Dioceſe of *York* there is a Peculiar called the Archdeaconry of *Rippon*, and that was cited out of it to the Court of the Archbiſhop of *York*, and therefore he prayed a Prohibition; but denied (*Cooke* abſent) for that the Biſhop did not cite him in Virtue of his Provincial or Metropolitan Power, but as Ordinary of the Dioceſe of *York*;

York; and this Archdeaconry is within his Dioceſe, and not exempt from the Ordinary. 1 *Rol. Rep.* 136.

3. Ejectment, and upon *Non Culp.* tried at Bar, ſpecial Verdict found, That the Rectory of *Hemſworth* in *Com. Ebor.* Time whereof, *&c.* Parcel of the Prebend of *Laughton in le Morn. Com. Ebor.* is not within the Dioceſe and Province of *York*, but within the peculiar Juriſdiction of the Prebend *de Laughton in le Morn ſpectan. Decano & Capit. de Ebor.* and that the Dean and Chapter, Time whereof, *&c.* have uſed to inſtitute *in eandem Eccleſiam*, being a Church *cum cura animar'*. And that the ſaid Church being void, the Duke of *Norfolk* Patron in 1679, preſented the Defendant, who was inſtituted and inducted by the Archbiſhop of *York*, and read the Articles, *&c.* and that the Church ſo continued eighteen Months without any other Inſtitution, and after that the King preſented the Leſſor of the Plaintiff by Lapſe, who was inſtituted, *&c.* by the Dean and Chapter; and if the Inſtitution, *&c.* by the Archbiſhop was good, or not, was the ſole Queſtion. And it was argued for the Plaintiff, that it being a Peculiar the Archbiſhop had nothing to do with it; but his Acts there are meer Nullities, and void, and not as in Caſe of Adminiſtrations granted of Goods in another Dioceſe, where are no *Bona notabilia*, voidable only; and they relied much upon the Books 11 *H.* 4. 9. where ſome ſuch Opinions are, and *Co.* 13. *Rep. Porter* verſus *Rocheſter*, where it's ſaid, that all the Power

that the Archbiſhop uſed in ſuch a Caſe was by his Legatine Power from the Pope; and *Rolle, Preſentment*, 357. as a Caſe in Point; and that there are many Peculiars in the Hands of Lay Perſons where no Archbiſhop or Biſhop have any Thing to do. But upon all the Arguments and Books conſidered, all the Court unanimouſly agreed that Judgment ſhould be given for the Defendant; and *Jones*, Lord Chief Juſtice, delivered it in the Name of all the others; and their Reaſon was, that in all theſe Caſes of the Clergy, he (the Archbiſhop) had two concurrent Juriſdictions; the one Ordinary, as Biſhop of his Dioceſe, the other Superintendent for all the Province, of Things Eccleſiaſtical to correct and alſo to ſupply the Defects of the Ordinary; and therefore theſe Acts are not void; *quia* he hath Juriſdiction for all the Province, and it ſhall be intended done in Default of the Ordinary, till the contrary, on Examination, ſhall appear, ſo they are voidable, but till avoided, they are good; and likened it to the Caſe of a Sheriff, who executes a Writ within a Franchiſe which is not void, becauſe within the County, and derived out of it. And this is not like the Caſe of Peculiars exempted *ab omni Juriſdictione*, as many are in the Hands of Laymen, and there the Ordinary hath no Power of Viſitation, which is not to be intended in the preſent Caſe. That a Prebend in a Church Cathedral ſhall be exempt of the Viſitation of the Ordinary, and for Authority relied upon *Fitzh. Quare Impedit*

Impedit, 162. *Hob.* 15. Sir *Timothy Hatton's* Case. 3 *Lev.* 211, 212.

Quære the last Part of this Case, and

See Lord *Holt's* Opinion in the following Case, being the Case of the Dean of *Salisbury*, reported in *Skin.* 589. And I submit it, in the present Case, it is a Peculiar exempt, where the Person, tho' an Ecclesiastick, holds as free from the Bishop's Controul or Intermeddling as any Layman, it being a Lay Fee and a Temporal Office, tho' the Person exercising be a Churchman and employ'd about Matters Spiritual; and the Thing it self being exempt from all Episcopal Jurisdiction, the Person holding it cannot vary the Case, as hath been often adjudged, for the great Uncertainty and Inconvenience which must follow such a Notion. And I observe, my Lord *Holt* in the same Case, tho' the Dean had made Request to the Dean of the Arches, yet would not suffer that incautious Act of the Dean to prejudice the Exemption, as it would, as I conceive, have been a Countenancing the Dean in an Act injurious to his Successors, to have either concluded the Dean by it, or suffered it to have passed without annulling, or *sub silentio*.

4. Upon a Declaration in Prohibition and the Pleading to it upon Demurrer, two Questions were argued. First, Upon the *Remisit Curiam* by the Dean of *Salisbury*, who had a Peculiar, and had made Letters of Request to the Dean of the Arches; upon which it was objected, that it was *per Saltum*, and that he ought to have made his Request to the immediate Ordinary, and *Hob.* 16, & 186. and *Cro. Car.* 162, &c. were cited to the Purpose; *sed non allocatur*; for tho' this is true, it was a Peculiar of an Archdeacon, or any other Subject to the Jurisdiction of the Ordinary that the Objections made, and the Cases cited would hold; but to this *Holt*, Lord Chief Justice said, there are three Sorts of Peculiars, (*as hath been shew'd*) and he said, that tho' the Dean of *Sarum* is, to some Purposes, subject to the Jurisdiction of the Bishop, yet as to this Peculiar, it is all one as if in a Stranger,

and not under the Biſhop of *Sarum*'s Juriſdiction, any more than the Biſhop of *London*'s; and if he had made Requeſt to the Biſhop of *Sarum*, and the Party had been cited upon it, ſuch a Citation had been out of his Dioceſe within the Stat. 23 *H.* 8. And it does not appear that he is within the Juriſdiction of the Biſhop of *Sarum*, and therefore it ſhall not be intended. *Skin.* 589.

2. *The Duty of ſuch.*

1. *As to Wills.*

2. *To be regiſter'd.*

WHereas Deans, Archdeacons, Prebendaries, and Parſons, Vicars, and others exerciſing Eccleſiaſtical Juriſdiction claim Liberties to prove Wills and Teſtaments, within their ſeveral Juriſdictions having no known nor certain Regiſters, no publick Places to keep their Records in, by Reaſon whereof many Wills, Rights, and Legacies, upon the Death or Change of ſuch Perſons and their private Notaries, miſcarry and cannot be found, to the great Prejudice of his Majeſty's Subjects; therefore all ſuch Poſſeſſors and Exerciſers of peculiar Juriſdiction ſhall, once in every Year, exhibit into the publick Regiſtry of the Biſhop of the Dioceſe, or of the Dean and Chapter under whoſe Juriſdiction the ſaid Peculiars are, every original Teſtament of every Perſon in that Time deceaſed, and by them proved in their peculiar Juriſdictions, or tru

true Copy of every ſuch Teſtament examined, ſubſcribed, and ſealed by the peculiar Judge and his Notary; otherwiſe if any of them fail ſo to do, the Biſhop of the Dioceſe, or Dean and Chapter, unto whom the ſaid Juriſdiction does reſpectively belong, ſhall ſuſpend the ſaid Parties, and every of them, from the Exerciſe of all ſuch peculiar Juriſdiction, until they have performed this Conſtitution. *Can.* 126.

This Canon I conceive can only be extended to ſubordinate Peculiars, and not to thoſe exempt *ab omni Juriſdictione Epiſcoporum*, tho' in the Hands of Eccleſiaſticks.

6. *Court of Faculties.*

1. *What it is, its Authority, and how raiſed.*

1. THE Court of Faculties is alſo a Court, tho' it holdeth no Plea of Controverſy (like the Court of Audience before) it belongeth to the Archbiſhop, and his Officer is called *Magiſter ad Facultates*, and his Power is to grant Diſpenſations, as to marry, to eat Fleſh on Days prohibited (and ſo may every Dioceſan) the Son to ſucceed his Father in his Benefice, one to have Two, or more Benefices incompatible, *&c.* It is called Faculties in the Statute 28 *H.* 8. which in one Senſe ſignifieth a Diſpenſation. (So as *Facultates* (in this Senſe) *Diſpenſationes*, & *Indulta* are *Synonyma*. 4 Inſt. 337.

2. The Court of Faculties. This Authority was raiſed and given to the Archbiſhop of *Canterbury* by the Statute 25 *H.* 8. *cap.* 21.

whereby Authority is given to him and his Succeſſors to grant Diſpenſations, Faculties, &c. by himſelf, or his ſufficient and ſubſtantial Commiſſary, or Deputy, for any ſuch Matter whereof heretofore ſuch Diſpenſations, Faculties, &c. had been accuſtomed to be had at *Rome*, or by Authority thereof. 4 *Inſt.* 337.

2. *As to* Commenda's, *Diſpenſations, and Faculties, granted by the Archbiſhop of* Canterbury.

1. *What.*

1. *Commenda* is derived from *commendare*, becauſe it is only committed *alicui in cuſtodiam.* Palm. 460.

2. *Commendam* is a Benefice, which, being void, is commended to the Care of ſome ſufficient Clerk to be ſupplied, until it may be conveniently provided of a Paſtor. And the true Original of theſe *Commenda's* was, either evident Profit, or Neceſſity. He to whom the Church is commended hath the Fruits and Profits thereof only for a certain Time, and the Nature of the Church is not changed thereby; but is as a Thing depoſited in the Hands of him to whom it is committed, who has nothing but the Cuſtody thereof, which may be revoked. *Terms de la Ley ſub hoc Tit.*

3. All *Commenda's* are Diſpenſations. *Palm.* 469.

4. *Commendare nihil aliud eſt quam deponere.* Dav. 75. b.

5. It

5. It is to be noted, ſaith Mr. Attorney General *Davis*, *quod Commenda eſt quædam Proviſio*; and therefore *Gomes in Regula Idiometa* ſaith, *quod commendare eſt providere, & quod Commenda comprehenditur ſub quibuſcunque Regulis de Proviſione loquentibus.* Dav. 74. b.

6. By the Canon Law it is declared *Quod commenda Eccl.* is nothing but *commendatio Eccleſiæ ad cuſtodiam alterius*; and therefore *Decret. Cauſ.* 21. 9. 1. Tit. *Qui plures*, the *Gloſſ.* ſaith, *Commendare nihil aliud eſt quam deponere.* Dav. 75. b.

7. *Diſpenſatio eſt Relaxatio Juris*, and permits that to be done, which the Law had prohibited, or forbidden before. 12 *H.* 8. 6. *a. Dav.* 69. *a.*

8. *Diſpenſationes*, ſaith the Canoniſt, *non debent trahi ad Communem Legem.* Dav. 81. a.

9. Pope *Leo* the 4th, *Anno Domini* 848. *aut eo circiter*, firſt invented the *Commendam.* Lib. Decret. Cauſ. 2 Queſt. 2 Dav. 79. a.

10. Diſpenſation *eſt provida Relaxatio mali prohibiti utilitate vel neceſſitate penſata.* Palm. 476.

11. A Diſpenſation takes away and prevents the Offence; but a Pardon only takes away the Puniſhment. *Palm.* 476.

12. The Intention ought to be regarded, and not the preciſe Words in the King's Grants. *Palm.* 476. The Earl of *Salop*'s Caſe. 9 *Co.*

13. Every Appropriation compriſes in it a Diſpenſation to the Parſon *imparſonee* to have and retain the Benefice in Pepetuity,

as appears from *Grendon's* Caſe in the *Com.* 503. *Dav.* 73. *a.*

14. It is an uſual Practice, that the King, for the moſt part, upon creating of Biſhops, grants unto them to hold their Benefices *in Commendam*, which is good againſt the Patron, becauſe the Preſentation belonged to the King, and that is as great a Prejudice to the Patron, as if the King himſelf had preſented thereunto. *Cro. Eliz.* 527.

2. *The Sorts.*

1. *General.*

1. *Commenda, ſeu Commendatio Eccleſiæ* are diverſe, according to the Nature of the Church, and the Limitations or Continuance of the *Commenda*; for a *Commenda* may be *Eccleſiæ Curatæ, vel non Curatæ*, and it may be *Temporanea*, (*viz.*) for a Time certain, as for ſix Months, or perpetual (*viz.*) during the Life of the Commendatary. *Dav.* 76. *a.*

2. *Commendams* are of three Degrees, one *Semeſtris*, another *perpetua, vel ad vitam*, a Third *intermedia*, or *diuturna, ſed limitata*, which is called ſometimes *temporaria*, or *temporalis*, or *ad certum temporis ſpatium limitata.* Hob. 144.

3. *Commenda proprie dicta & improprie dicta*, the Difference. *Palm.* 477.

4. *Dodderidge* ſaid, there are two Sorts of *Commenda's*, the firſt, *retinere priora Beneficia*, the Second, *recipere qualiacunque.* Palm. 477.

2. *Com-*

2. *Commenda Semeſtris.*

Commenda Semeſtris grew out of a natural Equity, that in the Time of the Patron's Reſpite given him to preſent, the Church ſhould not be without a proviſional Paſtor, which was a Law of Neceſſity agreeable to the Law of Nature; and this might, upon the ſame Reaſon, be continued with Revenues, ſo long as the Patron's Reſpite laſted; but after the Lapſe juſtly incurr'd, the *Commendam* is to ceaſe, or then the Ordinary may collate; for *Natura appetit perfectum & bonum, neceſſarium extra terminos Neceſſitatis non eſt bonum.* Hob. 144.

3. *Temporary.*

A *Commenda* Temporary, more than for ſix Months, and leſs than for Life, cannot ſtand with the Rule of the Common Law. *Hob.* 149.

4. *Perpetual.*

1. *What, and its Continuance.*

1. A *Commenda perpetua* is during the Life of the Commendatory *tantum*, and an Appropriation is in Perpetuity. *Dav.* 81. *b.*

2. *Commenda perpetua* can be for no leſs than for the Life of the Commendatory abſolute. *Hob.* 143.

3. *Hill.*

* 3. *Hill.* 8 *Geo.* 2. *Banco Regis.* The Bishop of *Landaff* and the King. My Lord Chief Justice, delivering the Resolution of the Court, said, he agreed that a perpetual *Commendam capere* for the Life of the Commendatory amounted to a Presentation, and so his Lordship said was *Dav.* 82. *Hob.* 150, 153.

5. *Commenda Recipere & Retinere.*

1. *What, and whether good.*

1. A *Commendam retinere* is no *Commendam*, tho' commonly so called; but is only a Faculty of Retention and Continuation of the Benefice in the same Person and State wherein it was, notwithstanding something intervening, &c. *Hob.* 143.

2. A *Commenda* for six Years *retinere* good. *Palm.* 464, 465. *Vide Hob.* 156. *Vau.* 25.

3. The Words of the Stat. 21 *H.* 8. may purchase Licence to receive and keep two Benefices with Cure, and the Words of Dispensation are, *Recipere & Retinere*; and as by Institution the Church was full of him, he could not purchase Licence to receive what he had before, and the Words are in a Conjunctive, *Recipere & Retinere*; so that he might not retain what he could not receive; and it hath been adjudged, that he who is only instituted is said to have a Benefice with Cure; and of this Opinion were all the Justices and Barons of the Exchequer. 4 *Co. Digby's* Case, *fo.* 78. *b.* 79. *a. b.* 80. *a.*

4. The

4. The Licence for Pluralities being *Recipere & Retinere* when the Church was full of him by Inſtitution, he could not purchaſe or licence to receive what he had already, and he could not retain what he could not receive; for the Licence is in the Conjunctive, *Recipere & Retinere*. 4 Co. 79. a. b. 80. a. Palm. 462.

6. *Whether Commenda's and Diſpenſations in general, are good, or not.*

1. *Annis* 6 & 7 *Eliz.* *Dy.* 233. *a.* *John Packhurſt*, being elected to the Biſhoprick of *Norwich*, before his Creation, obtained a Diſpenſation from the Archbiſhop of *Canterbury*, by Virtue of the Statute of *Faculties*, to retain a *Parſonage*, which he had before, *in Commendam pro tribus annis*, (*viz.*) *a tertio Sancti Michaelis in Anno Domini* 1560. *uſq; ad idem Feſtum*, which ſhould be *in anno* 1563; before the firſt Feaſt of *St. Michael*, *Packhurſt* is created Biſhop, and after reſigns the Benefice; and the Queſtion was, if this Benefice *vacavit* by the Reſignation of *Packhurſt*, or by his Promotion to the Biſhoprick, and it was adjudged that the Church voided by his Reſignation, which proves that by Virtue of this Diſpenſation he continued Parſon till he had reſigned. *Vide Nat. Br.* 36. H. *Dav.* 77. *b.*

2. *B.* grants the next Avoidance to *J. S.* then the Incumbent is choſen Biſhop of a Place in *Ireland*, and, before Conſecration, hath a Diſpenſation to retain the former Church *in Commenda* for ſix Years, and ſurvives

vives the ſix Years; the King preſents *J. S.* who was inſtituted and inducted and died; the Aſſignee of *J. S.* preſented, and the Grantor, or his Heir, preſented; whereupon the other brought a *Quare impedit*, wherein theſe Points were reſolved. 1. That the Biſhoprick in *Ireland* made a Ceſſion of the Church in *England*. 2. That notwithſtanding the Word *Commenda*, yet being *Retinere*, he held in Title notwithſtanding. 3. That the Diſpenſation *Retinere* for ſix Years is good, and during which Time he continues full Incumbent, not to make him Parſon for the ſix Years, but in ſuch Manner, that during the ſix Years the Canon ſhall not meddle with him; and therefore if during the ſix Years he reſigns, the Church is void by Reſignation. 4. There was a Difference amongſt the Judges, if the Diſpenſation for ſix Months ſhould ſerve the King's Turn; but it was reſolved that the Grantee was barred.

3. In *Quare impedit*, the Queen made her Title by Lapſe, *ſur le Stat.* 21 *H.* 8. the Incumbent having taken a ſecond Benefice. The Defendant pleads his being Chaplain to Lord *Morley*, and a Diſpenſation from the Archbiſhop of *Canterbury*, according to the Statute, and Confirmation, *&c.* and on *Oyer* demanded, it was demurred in Law; becauſe in Letters of Diſpenſation the Words were mentioning two Benefices to be of ſuch Value, *unimus*, *annexímus*, *& incorporamus* the ſecond Benefice to the firſt, without the Word of *Diſpenſamus* for taking thereof; and the Queſtion was, whether theſe Words ſhould enure to a Diſpenſation; and after

Argu-

Argument by the Serjeants, it was argued by Doctors *Steward*, *Day*, and *Farrington*, that it could not; for the Purpoſe of him who made it was to make an Union, and it cannot be an Union; for that ought always to be by the Ordinary and Patron, and when it fails in the principal Intent it is void in Law; and the Purpoſe to make an Union appears, the Words being *Incorporamus*, *&c.* which is not uſed in a Diſpenſation, and that he ſhould hold it *ſine Licentia Dioceſana*, and that after the Incumbent's Death it ſhould revert to its proper Nature, which are not the Words of a Diſpenſation, that will not enure thereunto; for *Voluntate* and *Poteſtate repugnantibus*, all is void; and an Union and Diſpenſation are of different Natures, an Union making of two *Churches* one; but a Diſpenſation leaves them as before, and ſuch Diſpenſations of *Pluralities* in the Civil Law are called *Gratiæ*, *& ſtricti Juris*, *quia odioſæ ſunt*; and therefore where a Diſpenſation was to hold a ſecond Living *de Donatione*, *Diſpoſitione*, *vel Præſentatione cujuſcunque*, and a College had an Advowſon which became void, and they uſed by Election to make Nomination thereunto, and they choſe him who had this Diſpenſation, who being preſented was inſtituted and inducted, this Diſpenſation was not ſufficient to retain, becauſe he had not the Word *Election* therein; but *è contra*, it was argued by Doctors *Crompton* and *Fountaine*, that the Diſpenſation was good; for there is a Difference between a perpetual Union and a Temporary *pro Vita Incumbentis*; for in the firſt, it cannot be without the Patron and Ordinary,

Ordinary, for thereby a Loſs accrues to them; but in the ſecond, it may be by the Metropolitan without them, for there they are at no Loſs; for the one had his Preſentation, the other his Admiſſion before the Union, and after his Death it ſhall revert to the firſt Eſtate, and ſuch an Union, in their Law, is called *Paliata Diſpenſatio*; and that ſuch an Union may be appears by expreſs Words of the Statute 21 *H.* 8. that one ſhall not retain a ſecond Benefice, any Licence, Union, or Diſpenſation to the contrary, *&c.* and there it is not intended a perpetual Union; for, by ſuch an Union, two Churches are but one, and in ſuch a Caſe, he may take a ſecond Benefice with a Diſpenſation, *&c.* And afterwards all the Juſtices reſolved, beſides *Anderſon*, that it was a ſufficient Diſpenſation; for it is not of Neceſſity to have the Word *Diſpenſation*; but the Matter is, whether it may be, in Effect, a Diſpenſation, and if the Circumſtances prove it, it is ſufficient, and the Union is properly where there is an Annexation of one Benefice to another perpetually; yet it is alſo when there is an Unity of them in one Perſon, which is temporary, and that is here, though not ſo properly as the other; wherefore it was adjudged for the Defendant. *Cro. Eliz.* 719, 720. *Vide Jones* 394. *Mo.* 434. *Hob.* 157, 158, 327. *Hut.* 41. *Vau.* 19, 20. *Dav.* 68. *Doct. & Stud.* 126. *Palm.* 344, 457. *Noy* 98. *Jo.* 158. *Dy.* 233. *Vau.* 24. 2 *Cro.* 691. *Palm.* 344 to 351. *Vide* Caſe, Biſhop of *Armagh* and Dr. *Whaley* and *Attorney General* before the Houſe of Lords 21 *April* 1731.

7. *The Power of granting them, but delegated and limited.*

1. The Power given to the Archbiſhop, or Dean and Chapter, by the Statute, and the true Meaning of it concerning Faculties and Diſpenſations, Lord *Hobart* calls *Authoritatem ordinariam, limitatam, & delegatam.* Hob. 143.

2. The Queen, by her Prerogative, without the Archbiſhop, may grant to a Biſhop to hold a Church in *Commendam.* Cro. Eliz. 601. *For this Authority veſted in the Archbiſhop is but derivative from the Crown.*

8. *What neceſſary to Diſpenſations.*

1. *General.*

1. By the Canon Law the Conſent of the Patron is requiſite, where a Benefice is given in *Commendam.* Dav. 74. a. b. *and Citations.*

2. To the making of a *Commendam* by Canon, the Conſent of the Patron *& eorum qui lædi poſſunt* muſt be had. The Biſhop is not *Prælatus*, but Procurator, Adminiſtrator, *& habet Titulum Canonicum.* It doth not make *fructus ſuos*, but *ad providendum ſibi, &c.* Hob. 144, 145.

3. If the Archbiſhop ſhould commend to a Church void, *Licet Patronus non conſenſerit*, his *Commendam* would be void; tho' the Patron ſhould after Conſent. *Hob.* 152, 154.

154, 155. *Dy.* 87. *Fitzh. Nat. Br.* 34 G. 25 *E.* 3. 24.

2. *Incidents.*

A Diſpenſation to make a Title ought to have three Incidents. 1. It ought to be *Recipere* and converted *in uſus propries.* 2. It ought to be *in utilitatem Eccleſiæ vel perſonæ.* 3. There ought to be the Aſſent of the Patron. *Palm.* 477.

3. *Terms or Conditions may be annexed thereunto.*

As the Archbiſhop is to grant Diſpenſations at his Diſcretion, ſo he may annex what Conditions he pleaſes to his Diſpenſations; as that he ſhould preach at ſuch certain Times in the Year; or that he ſhould be reſident at certain Times; or that he ſhould obſerve the Diſcipline of the Church; *or that the ſecond Living ſhould be within ſuch a Diſtance,* or the like. *Mo.* 465, 561.

4. *Wherefore to be granted.*

1. *Commendam* is to be granted *Neceſſitate evidenti, vel Utilitate Eccleſiæ ſuadente,* as for Want of Paſtors, as was in the Infancy of the Church. 1 *Rol. Rep.* 452.

2. *Pro evidenti Neceſſitate aut utilitate Eccleſiæ Lex permittit, &c.* Cow. Int. ſub hoc Tit.

3. *Commenda's* are to be either in Caſes of Neceſſity, or Utility of the Church. *Davis's Rep.*

4. A Church with Cure ought not to be given *in Commendam*, unleſs for evident Neceſſity, or for the Church's Advantage, *viz.* To ſupply the Cure till Proviſion made of a ſufficient Incumbent; and therefore it was provided by the Council of *Lyons*, that a parochial Church ſhould not be given in *in Commendam*, *niſi ex evidenti Neceſſitate vel utilitate Eccleſiæ, & quod talis Commenda ultra Semeſtris temporis Spatium non duraret, & quod ſecus factum fuerit ſit irritum ipſo Jure, &c. Decretal. c. Nemo*; but Benefices *ſans* Cure might be given by the Canon Law for Suſtentation of the Commendatory, *vel ad menſam*; and in this Senſe the Canoniſts might ſay, *quod Commenda eſt quaſi Comedenda, quia Eccleſia quæ traditur in Commendam, quaſi comeditur & devoratur*, and ſuch Benefices might properly be given *in perpetuam Comendam, ſumma ſummarum* Tit. *Commenda, Articul.* 1 & 2. By which it appears, that a Vicarage being a Benefice with Cure might not be given *in perpetuam Commendam* by the ſaid Canon; by the Gloſs upon which Canon, 6 *Decretal. cap. Nemo*, it is ſaid, *quod iſta Conſtitutio non comprehendit Romanum Pontificem, ideo Romanus Pontifex poteſt in perpetuum commendare.* Dav. 76. a.

5. *How to be granted.*

The Stat. 25 *H.* 8. as to ſuch Diſpenſations as the Archbiſhop is to grant, hath negative Words in it, namely, that all Diſ-

penſations which the Archbiſhop is to grant ſhall be granted in Manner and Form following, and not otherwiſe, *as ſaith the Statute*, (that is) the Archbiſhop ſhall make an Inſtrument under his Seal, *&c.* *Mo. fo.* 562.

6. *In what Time to be granted.*

1. A Diſpenſation comes too late after Inſtitution; for by Inſtitution *Eccleſia plena & conſulta exiſtit* againſt all Perſons, except the King; for when the Biſhop upon Examination admits him able, then he inſtitutes him, and ſaith, *inſtituo te ad tale Beneficium, & habere Curam Animarum* of ſuch a Pariſh, *& accipe Curam tuam & meam.* *Vide* 3 *H.* 6. 13. Tho' as to the Temporalties, as the Glebe, *&c.* he hath not the Freehold in them till Induction. *Vide Hare* and *Buckley*'s Caſe, *Plow. Com.* 528. And Lord *Coke* obſerves, *quod per generale Conſilium Laterenſe tentum ſub Innocenti Papa tertio ſtatutum eſt, quod quicunque receperit aliquod Beneficium habens Curam Animarum annexam, ſi prius tale Beneficium obtinebat, eo ſit jure ipſo privatus, & ſi forte illud retinere contenderit, alio etiam ſpolietur; Is quodque alterius conferat cui merito viderit conferendum*; and this Council was held *Anno Dom.* 1215. By which it appears, that by the Taking of a ſecond Benefice the firſt is void *ipſo Jure*, and the Patron may preſent; and on this general Council are the Books 9 *E.* 3. 22. *a.* 10 *E.* 3. 1. (where the Council is mentioned). 24 *E.* 3. 30. *a.* 11 *H.* 4 37. 14 *H.* 7. 28. 14 *H.* 8. 17. *Fitz. Nat. Br.* 37. L. 4 *Co.* 79. *a.* *Dy.* 346. *a. b.*

2. It

2. It hath been adjudged, that where a Clerk was preſented, admitted and inſtituted to a Benefice with Cure above the Value of eight Pounds, and after, but before Induction to the firſt, he accepts a ſecond Living with Cure, and thereto is inducted, that the firſt is void by the Stat. 21 *H.* 8. for the Words of the Act are, if any Perſon having one Benefice with Cure, *&c.* accept and take another, *&c.* and he who is inſtituted to a Benefice is ſaid in Law to have accepted a Benefice; and *Popham*, Lord Chief Juſtice, ſaid, tho' by Inſtitution to the ſecond Benefice the firſt is void *ſans aſcun Deprivation ou Sentence*, yet no Lapſe incurs againſt the Patron *ſans* Notice, no more than when the Church becomes void by Privation, or Reſignation, and yet the Patron might take Notice of it, if he pleaſed, and preſent; *quod fuit conceſſum per totam Curiam.* 4 Co. 79. b. 75. b. *Vide* Dy. Weſton's Caſe, 347, 348. Q. As to the Notice, and *vide poſt*, *fo.* 285. Caſe 2. *fo.* 286. Caſes 4 and 5.

3. One *Merrick*, Parſon of *Norton*, of the Value of eight Pounds a Year was preſented to the Church of *Stanes*, and admitted and inſtituted to it; by which ſecond Inſtitution the firſt Church was void; yet before the Induction he obtained a Qualification and Diſpenſation *Eccleſiam de Stanes recipere & retinere quoad vixerit*, *&c.* yet it came too late to preſerve the firſt Benefice, which was void before. *Vide* 18 *Eliz. Dy.* 347. Dr. *Weſton*'s Caſe, *Dav.* 78. *a.* So that a Faculty to take a void Benefice *in perpetuam Commendam* is void; but if the

Benefice be full of an Incumbent a Faculty may be granted to ſuch Incumbent to retain it *in perpetuam Commendam*, *non obſtante* his taking another Living incompatible. *Dav.* 78. *a.* And therefore the Bulls of the Popes of Proviſions, which were in the Nature of Faculties to take Benefices *vacantia*, *vel vacatura*, never made the Proviſors able to take and occupy a Benefice which ſhould be void of his own Head, *ſans* Inſtitution, Admiſſion, or Induction; for in ſuch Caſe he ſhould have been an Abator and Diſturber, and *Quare impedit* would lie againſt him; but if ſuch Proviſor had been admitted, inſtituted and inducted, then he ſhould be removed by the Statute *de Proviſoribus*. 29 *E.* 3. 44. *a.* 11 *H.* 4. 213, 229. But the King might remove ſuch Proviſor by *Quare impedit* after Inſtitution and Induction. 19 *E.* 3. *Fitz. Quare non admiſit* 7, 8. *Dav.* 78. *a.*

4. A Diſpenſation, as a Chaplain to hold a ſecond Living, comes too late, being after Inſtitution, and before Induction. *Mo.* 434 to 448. incluſive. *Vide Stat.* 21 *H.* 8. and 25 *H.* 8.

5. 11 *H.* 4. It is agreed, that if a Biſhop purchaſe a *Commendam* to retain another Dignity with his Biſhoprick, after Election, it is good; but after Creation, *aliter*. Mo. 443.

6. Where Diſpenſation comes after Inſtitution and Induction to a Benefice, or after the Creation of the Biſhop, it comes too late, and cannot enable him to retain. *Dav.* 77. *a. b.*

7. In

7. In the principal Caſe the Grant of Diſpenſation came ſoon enough, tho' after Election, being before Conſecration, and in Caſe of Tranſlation, before Confirmation. *Palm.* 474, 475.

8. It appears by *Holland*'s Caſe, 4 *Co.* 75. that *John May* having the Parſonage of *North-Creake*, which was above the yearly Value of eight Pounds, accepted another Benefice incompatible, ſo that the firſt was void, and after was elected to the Biſhoprick of *Carliſle*; and before his Conſecration he obtained a Faculty of Retainer to hold the Parſonage of *North-Creake* in *Commendam*, & *Fructus & Emolumenta ad uſus ſuos convertere*, &c. yet it was adjudged that this Faculty could not help him for the Benefice which was void; for that he was not Parſon at the Time of the Diſpenſation granted to him. *Dav.* 77. *b.* 78. *a.*

9. By the Rule of Canon Law, he who comes in by *Commendam*, *non eſt Prælatus*, *ſed Procurator tantum*, & *eſt niſi Cuſtos*, *ſeu Adminiſtrator*, & *jus in Eccleſia non habet.* 6 *Decretal. cap. Nemo*, & *Conſtit. Othoboni*, *cap. De Commendis Eccleſiar. fo.* 65. and herewith agrees 27 *H.* 8. 15. where it is ſaid, that the Cardinal of *York* had the Abbey of *St. Albans* in *Commendam*, and yet was not Abbot. *Dav.* 76. *b.* Yet this Difference was agreed, that if a Clerk be preſented to a Benefice with Cure, and be thereto admitted, inſtituted and inducted, ſo that the Church is full of him; if after he be preſented to another Benefice incompatible, or elected to a Biſhoprick, and before Inſtitution to the ſecond Benefice, or be

created a Biſhop, he obtain a Faculty or Diſpenſation to retain the firſt Benefice *perpetuæ Commendæ*, which is for his Life, this Faculty or Diſpenſation ſhall be of ſuch Effect, that the ſaid Benefice ſhall not be void by the Acceptance of the Second, or by the Promotion to the Biſhoprick, but that he ſhall remain full and perfect Incumbent of the firſt Benefice during his Life. The Faculty or Diſpenſation in ſuch Caſe was no Tort or Injury to the Patron; for the Patron could not preſent again till the next Avoidance, and in ſuch Caſe the Church doth not become void by Reaſon of the Diſpenſation, which prevents the Avoidance. *Vide Rebuff. de praxi Beneficior. 3 Part. Signatur ſi Papa diſpenſit cum promoto ad Epiſcopatum ut retineat ſua Beneficia, poterit retinere etiam quæ ſub Patronatu Laicor. ſunt, quia non agitur de præjudicio Patroni, cum non vacat Beneficium*; for the Law which ordains that the firſt Benefice ſhall be void by Acceptance of a Second may be diſpenſed with; and the ſame of the Law which ordains, that when a Man is made a Biſhop that his other Benefices ſhall be void, as *Thirming* ſaid, 11 *H.* 4. 213. *b.* For thoſe Laws were made by Eccleſiaſtical Policy; and therefore the ſame Policy may diſpenſe with them; but the Law which prohibits Tort or Injury to a third Perſon may not be diſpenſed with, for the Reaſons above; and therefore the Benefice which is once void, and the next Avoidance come to the Patron, may not be taken and occupied by Virtue of any ſuch Licence or Faculty; and according

ing to this Difference are many Caſes ruled in the Books. *Dav.* 76. *b.* 77. *a.*

7. *To whom may not be granted.*

A *Commendam* cannot be to a Man's Self, or to hold the Living which he then hath; for that is no more than a Faculty to retain; for my own Benefice cannot be recommended to me. *Hob.* 144. *Vide* the Evils thereof.

8. *Whether* Commenda's *or Diſpenſations need to be enrolled.*

Parkhurſt, Biſhop of *Norwich*, was Parſon of C. in *Glouceſterſhire*, and before he was made Biſhop he obtained a Diſpenſation from the Archbiſhop of *Canterbury*, *Tempore Reginæ Eliz.* to retain the ſaid Benefice *in Commendam*, notwithſtanding his being advanced to any Biſhoprick within the Realm *pro tribus Annis*, (viz.) *a Feſto Sancti Mich. Anno Dom.* 1560. *uſque ad idem Feſtum quod eſſet anno* 1563. but the Diſpenſation was not inrolled in Chancery, as the Statute 25 *H.* 8. directs; nor in any other of the Queen's Courts; but only in the Archbiſhop's Regiſter; and before the ſaid firſt Feaſt of *St. Michael* he was made a Biſhop and then reſigned the Benefice; and whether this was good or not, was the Queſtion upon the Iſſue, *ſi vacuit per Reſignationem dicti* Johannis Parkhurſt, *vel non*, and Iſſue was found *quod Eccleſia vacavit per Reſignationem, &c.* Dy. 233. a. b. Fitzh. Nat. Br.

36. H. Dav. 77. b. *Vide poſtea*, whether neceſſary for Chaplains to ſue out Diſpenſations.

9. *Who may be, and what Intereſt the Commendatory hath therein.*

1. In ſuch Caſe the Incumbent holds one by Title, the other *in Commenda*, (*viz.*) that the other Benefice might be commended and committed to his Cuſtody and Care till an able Incumbent might be provided for it. *Dav.* 79. *a.*

2. *Commenda temporalis* is but Sequeſtration, and may be granted by every Ordinary for *Tempus Semeſtre*; and therefore ſuch Commendatory *non eſt Prælatus, nec Maritus Eccleſiæ, nec facit fructus ſuos; ſed eſt Adminiſtrator tantum & Cuſtos Eccleſiæ*; and ſuch *Commenda non eſt Titulus, nec facit Titulum, ſed eſt quoddam Depoſitum*, till a ſufficient Incumbent can be provided; and therefore ſuch *Commenda* is commonly granted when the Patron doth not preſent an able Perſon, or when the Church is litigious. *Dav.* 82. *b.*

3. *Commendatorius perpetuus fructus recipit, confert, locat, & omnia alia facit ſicut habens Titulum. Commenda perpetua non poteſt revocari*, ſaith *Rebuffus*. Dav. 83. a.

4. Faculty or Diſpenſation to hold a Benefice *in perpetuam Commendam* is good and effectual only to ſuch Perſon who is compleat and perfect Incumbent at the Time of the Diſpenſation made to him, and not to him

him who hath nothing in the Benefice at the Time. *Dav.* 77. *b.*

5. If the Grant be *recipere in Commenda*, ſuch Grantee is not plenary Incumbent. *Palm.* 460.

6. If one who hath a Diſpenſation to hold his Rectory be created a Biſhop, and after the Patron preſent another Incumbent, who is inſtituted and inducted, the Biſhop ſhall have Spoliation againſt ſuch Incumbent, which proves that his real Poſſeſſion in the Parſonage always continued by Virtue of the Diſpenſation; ſo that a Faculty or Diſpenſation to hold a Benefice *in perpetuam Commendam* is good and effectual to ſuch Perſon only who is full and perfect Incumbent at the Time of the Diſpenſation made to him, and not to him who hath nothing in the Benefice. *Dav.* 77. *b.*

7. The Chaplain of a Lord ſufficiently qualified with the Teſtimonial of his Maſter ſigned and ſealed, that he is his Chaplain; and alſo having a ſpecial Diſpenſation for a Plurality, and being actually advanced to ſuch Plurality, ought to enjoy it for Life, notwithſtanding the Death of his Maſter, or his Departure from his Service. *Per Opinionem* Catlin, Saunders, *and* Dyer. *Dyer* 312. *b.*

8. If a Baron retain three Chaplains, and they are all advanced, and then he dies, they ſhall retain the Livings they were lawfully ſettled in before. 4 *Co.* 119. *a.*

10. *Whether*

10. *Whether he is to pay First Fruits.*

1. Commendatory in by the first Title, shall not pay First-fruits. *Palm.* 350. *Vide Dav.* 76.

2. Commendatory *retinere* shall not pay First-fruits; for they are to be paid to the King after Induction; and therefore where there is no Induction there is no First-fruits; but *Commenda retinere & recipere* amounts to Institution. *Palm.* 465. *Hank.* 11 *H.* 4 60. 16 *E.* 4. *Fitz. Quare impedit*, 60. 9 *E.* 3. 20.

11. *Statutes concerning Dispensations.*

1. *General.*

The Statutes of Dispensations and Faculties in *England* are 21 *H.* 8. 25 *H.* 8. The Statute for the same Purpose in *Ireland* is 28 *H.* 8. *cap.* 20. *Dav. le Case de Commenda, fo.* 73. *a. b.*

2. *Stat.* 21 & 25 H. 8.

1. *How to be construed.*

1. The Stat. 21 *H.* 8. is only in Affirmance of the ancient Common Law, as appears in *Holland*'s Case. 4 *Co.* wherewith agree the Books. 24 *E.* 3. 33. 39 *E.* 3. 44. *a.* and *Fitz. Nat. Br.* 34. L.

2. It

2. It was ſaid, the Stat. 21 *H.* 8. *cap.* 13. ſhall be taken ſtrictly againſt Pluralities; and therefore it hath been held, that if a Baron, who by the Statute might retain three Chaplains, be made Warden of the *Cinque Ports*, who might have one Chaplain, in Reſpect of his Office; yet he ſhall have but Three; and ſo if a Baron have three, and be made an Earl, he ſhall have but five in all, *& ſic de cæteris.* 4 Co. 90. a. b. 118. a.

3. Stat. 21 *H.* 8. of Pluralities to be conſtrued ſtrictly againſt Non-reſidence, and Pluralities; *as Things moſt pernicious to the Service of* GOD *and Inſtruction of his People*; and therefore if a Biſhop be tranſlated to an Archbiſhoprick, or a Baron made a Knight of the Garter, or Warden of the *Cinque Ports*, he ſhall have but Three; *& ſic de ſimilibus, quod fuit conceſſ. quia difficile eſt ut unus homo vice duor. ſuſtineat.* 4 Co. 118. a.

4. *Coxe*, Chaplain to the Archbiſhop of *Canterbury* had a Benefice of the Patronage and Gift of Queen *Elizabeth*, and he obtained a Diſpenſation of Triality from the Archbiſhop, who was his Lord and Maſter, to take, have and enjoy three Benefices incompatible, and the Queen confirmed it under the Great Seal, with theſe Words, *ita quod omnibus & ſingulis in eiſdem Literis ſpecificat. frui, uti, & potiri valeat libere, quiete & impune abſque impedimento, &c. aliquo ſtatuto actu vel reſtrictione in contrarium edit. & proviſo, aut aliqua alia re, cauſa, vel materia quacunque in aliquo non obſtante, &c.* By Force whereof he obtained two other incompatible

patible Benefices; and whether the firſt of the Three was void by Stat. 21 *H.* 8. or not, was demurr'd in Law on a *Quare impedit* brought by the Queen againſt *Coxe* and the Biſhop. Whereupon a great Queſtion was, and eſpecially amongſt the Civilians, whether the ſaid Act 21 *H.* 8. was revived by the 1 *Eliz.* in the Articles and Points concerning Diſpenſations for Non-reſidence or Pluralities, which were repealed by the 1 & 2 *Ph. & Mar. Note*; that ſo much of the Stat. 21 *H.* 8. which concerns the procuring or obtaining of Diſpenſations from *Rome* for Pluralities or Non-reſidence, and all Sentences and Words concerning the ſame; And alſo the whole Act of the 25th for granting Diſpenſations at *Canterbury*, are repealed by the Act 1 & 2 *Ph. & Mar. c.* 8. and by the Act 1 *Eliz.* 1. the whole Act 1 & 2 *Ph. & Mar.* is repealed; and alſo this Part of 21 *H.* 8. and there are no Words of Revivor of it; for it had been meerly contrary to the Intent of the Act; but by the Act 25, which is revived, there is a Proviſo and Reſtraint to *Canterbury* for Diſpenſations derogatory or contrary to the Act 21, which affirms the 21ſt to be now *in Eſſe* and Force. *Et proxim. Term. Judicium datum fuit pro Dom. Regina ſine Argumento.* Dy. 351. b. 352. a.

* 5. *Hill.* 8 *Geo.* 2. *Banco Regis. The Biſhop of Landaff* and *The King.* Lord Chief Juſtice ſaid, that the Stat. 25 *H.* 8. 1. *Sect.* 3. 17. circumſcribed the granting *Commendams*, and ſays, that they ſhall not be granted but upon ſpecial Cauſes mentioned in the Petition.

2. *Sta-*

2. *Statute* 21 H. 8.

1. *To whom, and what it extendeth.*

1. *The Stat.* 21 H. 8. cap. 13. *of Pluralities extends only to Benefices with Cure of Souls; for by the expreſs Words of the Statute, Deaneries, Archdeaconries, and Appropriations are declared to be excepted out of this Statute: And ſo indeed are all Livings with Cure, which are under the yearly Value of eight Pounds* per Annum *in the King's Books; and Appropriations, or Impropriations, Donatives, Free Chapels, and other private Churches and Chapels erected or endowed by private Founders, are not at all in the King's Books; nor deemed in Judgment of Law as Benefices,* &c.

2. One having a Benefice with Cure of ten Pounds a Year, or more, receives another Benefice with Cure, and is inducted into it, the firſt is void, *ac ſi eſſet per mortem vel Reſignationem, & hoc per Statutum* 21 H. 8. But the Ordinary is not bound to give Notice of this Avoidance, of which the Patron may take Notice as well as the Ordinary, being by Act of Parliament, whereof every one is to take Notice. *Dy.* 255. 129, 237. *Hob.* 166, 168. *Dy.* 347, 352, 377. 4 *Co.* 75, 78, 79. *Mo.* 440. 3 *Cro.* 719. Q. As to the Ordinary's Notice, and *vide ante fo.* 275. Caſe 2, and *poſt fo.* 286. Caſes 4 and 5.

3. If a Parſon having a Parſonage take another Benefice *ſans* Diſpenſation, the firſt Benefice is void, and the Patron may preſent; and this Avoidance is called a Ceſſion. *Fitz. Nat. Br.* 34. L.

4. A

4. A Man takes two Benefices without any Qualification at all or any Diſpenſation whatſoever to enable him to take, receive, and hold two Benefices *cum Cura Animarum*: In this Caſe, tho' he is not inducted, yet the Patron of the firſt Church very well may take it as void, and very well preſent inſtantly, if he pleaſe; or he may, at his Pleaſure conſider it as full, and ſo leave it till Sentence of Deprivation be formally pronounced. *Dy.* 255. *a.* 377. *Hob.* 166, 168. 6 *Co.* 29, 30.

5. If one hath a Benefice with Cure of whatever Value in the King's Books, and is inſtituted and admitted into another Living with Cure, having no Qualification or Diſpenſation, the firſt Benefice is *ipſo facto* void, and the Patron may preſent again. *Vau.* 131. *Holland*'s Caſe and *Digby*'s Caſe. 4 *Co. Rep.*

9. *Chaplains capable of Diſpenſations or Pluralities.*

1. *By whom, and how many each Patron may name.*

1. *General.*

VIDE *auter* Stat. 21 *H.* 8. and 25 *H.* 8. how to be conſtrued. *Vide etiam les Statutes.*

2. *Whether an Infant Peer, may qualify for Pluralities.*

It was ruled *per totam Curiam*, that the Earl of *Southampton*, being but ten Years old and living in the Houſe with the Lord Admiral, to whom the Queen had put him in Ward, might retain and qualify Chaplains within this Act, for the Words of the Act are general; and yet his Guardian was a Nobleman, and had Chaplains by the ſame Act allowed to him, and the Earl of *Southampton* was under his Cuſtody and one of his Family. 4 *Co.* 117. *a.* 119.

3. *Where the Patron retaineth above his Number of Chaplains allowed him by the Statute.*

1. *Which capable of Diſpenſations.*

1. *The firſt retained.*

1. *General.*

1. A Counteſs being a Widow retains firſt two Chaplains, which is her Number by the Statute 21 *H.* 8. *cap.* 13. and after retains a Third, who firſt obtains Diſpenſation, yet this is void; for when ſhe had retained the two Firſt the Act was executed, for ſhe could retain no more than two capable of Diſpenſation, tho' ſhe might retain as many as ſhe would at Law; yet as ſhe could but qualify Two for Diſpenſation, it is but reaſonable that he who hath ſerved longeſt ſhould

ſhould firſt be preferred. *Qui prior eſt tempore potior eſt jure.* 4 Co. 90. *Vide* whether diſcharged or diſqualified, &c. where the Widow, Patroneſs, marries again.

2. *Mich.* 41 & 42 *Eliz.* *In Com. Banco,* in *Quare impedit* by the Queen againſt the Biſhop of *Lincoln* and *Drury*, for Diſturbance to preſent to the Church of *Roding alta* in *Eſſex*, belonging to the Manor of *Roding alta*, and the Queen made Title by Lapſe in this Manner (that is) *Joſſelin*, the Patron, preſented *Drury* to the Church of *Roding*, which was of eight Pounds value yearly, *Drury* accepted another Benefice with Cure, namely, *Tendering* in *Eſſex*, by which *Roding* became void, and Lapſe accrued to the Queen, in Default of the Patron, Ordinary, and Metropolitan; the Biſhop pleaded that he claimed nothing but as Ordinary, and *Drury* pleaded the Proviſo in the Statute 21 *Hen.* 8. that Widows, Dutcheſſes, Counteſſes, and Baroneſſes might have two Chaplains, each of which might obtain a Diſpenſation to retain two Benefices with Cure, and pleaded his Retainer by Writing which he ſhewed of *Margaret*, Counteſs of *Hereford*, Widow, *Anno* 24 *Eliz.* to be her Chaplain Domeſtical, and pleaded the Stat. 25 *H.* 8. which enabled the Archbiſhop of *Canterbury* to grant Diſpenſations, and pleaded a Diſpenſation of the ſaid Archbiſhop made before his Inſtitution to the Church of *Tendering*, and after his Retainer with the Counteſs for to take the Church of *Tendering* in this Sort (that is to ſay) to take one or two Benefices within 26 Miles diſtant from *Roding*, *ou Cure*, *ou*

ſans, & *incompatible*; and pleaded a Confirmation of this Diſpenſation under the Great Seal before Inſtitution to the Church of *Tendering*, and ſo juſtifies the Acceptance of *Tendering*, with Averment that the Counteſs was then alive, and that *Tendering* is not 26 Miles diſtant from *Roding*. The Attorney General replied, and prayed a Writ to the Biſhop on his Diſclaimer, &c. and to *Drury* he replied, that it is provided by the Statute 21 *H.* 8. that none, by Colour of that Act, ſhould advance more Perſons to Pluralities of Benefices than were the Number limited to them to prefer by the ſaid Act, and that all Diſpenſations againſt the Statute ſhould be void; and he alſo replied and ſaid, that the Counteſs, before the Retainer of *Drury*, had retained two other Chaplains, (*viz.*) *Page* and *Gardiner*, both which were alive at the Taking of this Diſpenſation, and of the Retainer of *Drury*, and ſo *Drury*'s Retainer void; wherefore, &c. The ſaid *Drury* replied, that before *Gardiner*, one of the ſaid firſt Chaplains of the Counteſs, had obtained any Letters of Diſpenſation for the Taking of two Benefices with Cure, that he himſelf had procured his Diſpenſation aforeſaid, and had taken the ſaid two Benefices; therefore, &c. and the Attorney General demurred in Law; and it was argued ſeveral Days, and now this Term, and becauſe the Judges were divided, *adjornatur* till *Paſchæ* 42 *Eliz.* when it was adjudged with the Queen, *Quia Anderſon*, *Glanvile* and *Kingſmill* held clearly, that the Chaplain firſt retained is to be preferred, and not the Chaplain who firſt ob-

tains Diſpenſation, or firſt takes the ſecond Benefice. *Walmeſley econ. Mo. fo.* 561, 562.

3. All the Court agreed, that though an Earl or Baron by the Statute may have two Chaplains capable of two Benefices; yet he may retain as many Chaplains as he pleaſes; but the firſt Two are only the Statute Chaplains to have the Privilege by the Retainer, which ſhall not be taken from them, ſo long as they remain Chaplains; nor any ſubſequent Retainer prevent them. *Cro. Eliz.* 839.

2. *Though ſuch Retainer be by Parol only.*

In *Quare impedit* between the Queen and the Biſhop of *Lincoln* and one *Skiſlin*. The Caſe was, that the Counteſs of *Kent* had two Chaplains by Patent, and a Third who had no Patent, but was firſt retained, and took two Benefices by Diſpenſation, which was adjudged lawful; for the Patent is not of Neceſſity, but the Retainer is good without Patent. *Mo. fo.* 277. Caſe 432. *Quære ſur le Caſe, Whetcombe* and *Hickford en le Common Pleas del Exchequer, Anno* 35 *ou* 36 *Eliz.*

2. *Where all retained together.*

1. *The firſt advanced.*

A Lord who is allowed but three Chaplains qualifies ſix by his Letters Teſtimonial to be his Chaplains at one Time, and all the Six are preferred to Six ſeveral Pluralities;

ties; the three firſt preferred are warranted by the Statute to enjoy *ſans* Danger, by the Opinion of *Catlin*, *Saunders* and *Dyer*; and the three laſt are not by the Statute to be reputed his Chaplains, ſo long as the firſt Three live. *Dyer* 312. *b.* and yet the Retainer was not according to the Statute; but *in æquali Jure melior eſt conditio poſſidentis.* 4 Co. 90. a. *elſe the Statute might be evaded.* *Dy.* 312. *b.* *P.* 88. 4 *Co.* 90. *And.* 200. 3 *Cro.* 727, 839. 5 *Co.* 89. *Mo.* 678. 277.

3. *Whether the Supernumerary be ſufficiently retained, or not.*

1. A Retainer not good at firſt ſhall not be ſo after; tho' one or more of the firſt retained Chaplains die, without a freſh Retainer. Reſolved by three Judges againſt *Gaudy*, who held the contrary Opinion. *Cro. Eliz.* 839. *Dy.* 312. 4 *Co.* 90. 1 *And.* 200. *Mo.* 678. 277.

2. One is retained a Chaplain by a Counteſs who hath retained her Number of Chaplains before, and this Supernumerary takes Pluralities. Adjudged againſt him. *Mo.* 277.

3. And where one qualified by the Statute retains above his Number, as he who might qualify three for Diſpenſation retains four, and after one dies; yet they muſt have freſh Retainers, elſe are not capable of ſuing out Licenſes; for *quod ab initio non valet in tractu temporis non convaleſcet.* So if a Son and Heir apparent of a Baron retain a Chaplain under Sign and Seal, and after his Father dies, and this Chaplain purchaſe a

Diſpenſation, theſe Letters will not avail him; for that they were inſufficient at firſt. 4 Co. 90. *a.*

4. *Whether it be neceſſary for Chaplains to ſue out Diſpenſations.*

1. The Chaplain of a Lord, having two Benefices with Cure *ſans* ſpecial Licence or Diſpenſation of the Metropolitan, is not in any Danger of loſing his Plurality, by the Stat. 21 *H.* 8. for that the Words are not, that he muſt or ought to ſue a Diſpenſation, *&c.* but that he might ſue out ſuch Licence, *&c.* but, as Lord *Dyer* ſaith, he is in Danger by the Spiritual Law; wherefore he ſaith, *Quære bien inde. Dy.* 312. *b. Vide antea, Whether* Commenda's *or Diſpenſations be not inrolled. Biſhop* Parkhurſt's *Caſe.*

2. The Chaplain of a Lord having two Benefices with Cure, *ſans* ſpecial Licence or Diſpenſation of the Metropolitan, is in no Danger of loſing his Plurality by Force of the Stat. 21 H. 8. *becauſe that the Words are not that he ought, or of Duty is bound, or that this Nomination of his Patron ſhall not otherwiſe avail him*; but that he may ſue out ſuch Licence, *&c.* but he is in Danger for it by the Spiritual Law; *yet quære bien inde, ſays the Book.* Dy. 312. *b. And with great* Reaſon *ſure; elſe, as I conceive, the Concurrence of the Primate is abſolutely neceſſary to make efficacious every Nomination of Peers and others les grand Homes du Realme and State, which I take not to be ſo much to the Honour of thoſe noble Perſonages*

however

however it may ſerve to aggrandize the Primate totius Angliæ; *nay, till this* Fiat *comes from the Archbiſhop, the Nomination remains inſignificant, and a meer nothing at all; and if ſo, it is neceſſarily in his Power whether ſuch Retainer ſhall ever be good, or not.* Vide *whether need be inrolled.*

5. *How they are to plead their Retainer.*

Trin. 6 *Geo.* 2. *in Banco Regis. Anonymus. Action qui tam* was *ſur le Statute* 21 *H.* 8. for Non-Reſidence, and for buying Goods, by Way of Merchandize, to ſell again. Mr. *Agar, now Serjeant*, moved for Liberty to plead, as to the Non-Reſidence, that the Defendant was a Chaplain retained, and that thereby he was enabled to hold two Benefices, and that he reſided on his other Benefice; as to the buying Goods to ſell again, he moved to plead, that the Goods were bought for the Uſe of his Family; and likewiſe he moved to plead as to the whole of the Declaration, *Nil debet*; accordingly the Motion was granted. *Probyn* Juſtice abſent.

6. *Whether they may be, and how, diſcharged.*

1. *Where the Widow Patroneſs marries again.*

1. A Baroneſs retains a Chaplain and marries a Baron, and then the Chaplain

takes the Plurality, and good; for ſhe is within the Statute being a Widow at the Time. *Acton's* Caſe, 4 *Co.*

2. If a Baroneſs retains two Chaplains and marries a Baron, and the Baron dies; yet the Chaplains remain her Chaplains *ſans novel Retainer*, and may take Pluralities; for their Retainer was not determined by her Marriage. 4 *Co.* 119. *a.*

3. Here the Queſtion was, a Baroneſs, Widow, retained two Chaplains, and they purchaſed Diſpenſations, and the Baroneſs married before the Chaplains accepted double Benefices; if now they might take Pluralities was the Queſtion? And it ſeemed they might, becauſe the Marriage had not diſcharged them from the Service; otherwiſe, if ſhe had died, or the Husband had diſcharged the Chaplains, as he might; but if he had not diſcharged them, but died, they needed no more Retainer. And ſo if a Baron, or other within the Statute, retain more than his Number, the firſt retained ſhall be the Perſons qualified, and no others. *Mo. fo.* 678.

2. *Where the Patron dies after the Chaplain advanced.*

1. The Chaplain of a Lord being ſufficiently qualified with the Teſtimonial of his Maſter ſigned and ſealed, that he is his Chaplain; and alſo having a ſpecial Diſpenſation for a Plurality, and being advanced thereunto, may enjoy it for his Life; tho' his Maſter die, or he depart from his ſaid Maſter's

Maſter's Service. *Per Opinionem Catlin, Saunders* and *Dyer*. Dy. 312. b.

3. *Where the Patron removed from his Office.*

1. If any Officer who may retain one or Two or more Chaplains, within the Statute, retain a Chaplain, and after is removed, the Retainer by the Statute is determined. 4 *Co.* 118. *a.*

2. If the Treaſurer, or Comptroller of the King's Houſhould, *&c.* retain a Chaplain, and is removed out of his Office, ſuch Chaplain may not accept a ſecond Benefice; for the Quality of his Perſon is altered, and the Cauſe wherefore he was to have Chaplains is removed. 4 *Co.* 117. *b.*

4. *Where the Patron attaint.*

1. The Maſter being attainted is a Diſcharge from the Service, and of the Power to qualify for Pluralities; and therefore Chaplains retained and qualified before, but have not taken double Benefices, are diſabled by the Attainder. *Mo.* 678.

2. The Earl of *Weſtmorland* retained a Chaplain, and after was attaint of Treaſon, and after during his Life, the Chaplain having a Benefice to the Value of 8 *l.* accepted a ſecond Benefice with Cure; adjudged the firſt Benefice void, for tho' the Earl was alive, yet the Quality of his Perſon was altered; for by the Judgment of Treaſon he was become ignoble. 4 *Co.* 117. *b.*

3. So that if an Earl or Baron retain a Chaplain, and before his Advancement ſuch Earl or Baron is attainted of Treaſon, as Lord *Weſtmorland*'s Caſe, there the Retainer, according to the Statute, is determined, and ſuch Chaplain may not accept a ſecond Benefice; becauſe he attaint is dead in Law, his Blood is corrupt, he is become ignoble, and his Dignity is determined. 4 *Co.* 118. *b.*

5. *Where the Clerk is actually advanced.*

That he may not be diſcharged after Advancement. See *Dy.* 129, 237, 255, 347, 352, 377. 4 *Co.* 75, 78, 79. *Mo.* 440. 3 *Cro.* 475. *Jo.* 394. *Mo.* 434. *Hob.* 157, *&c.* See the whole Caſe, *Colt* and *Glover*. *Vau.* 19, 20. *Dav.* 68. *Doct. & Stud.* 126. *Palm.* 344, 457. *Noy* 98. *Jo.* 158. *Dy.* 233. 2 *Cro.* 691. *Vau.* 24.

7. *Where Deprivation for Want of due Qualification.*

1. *Whether the ſame need be ſolemn and formal.*

In the King's Bench in a Prohibition for Tithes, the Caſe conſiſted of theſe three Points: 1ſt, If by Acceptance of a ſecond Benefice, the firſt was void *ipſo facto, ſans* Deprivation, before the Stat. 21 *H.* 8. 2dly, If it be void without Pleading of the Statute

21 *H.* 8. now after the Statute where the firſt Benefice exceeds 8 *l.* a Year, or that the Stat. ought to be pleaded; and the third Point was, if the Queen by the Stat. 25 *H.* 8. having the Supremacy united to the Crown, which the Pope had uſurped, might grant Diſpenſations without the Biſhop, in Caſes where the Archbiſhop might not, by the Statute 25 *H.* 8. grant Diſpenſations. Upon Argument of the Caſe, and Conſideration of the Books, (*viz.*) 5 *E.* 3. *fo.* 9. 24 *E.* 3. *fo.* 30. 26 *E.* 3. *fo.* . 11 *H.* 4. *fo.* . and 4 *H.* 8. by *Brown*, it was reſolved by the Juſtices, that by the Common Law the firſt Benefice was void before Stat. 21 *H.* 8. *ſans* Sentence declaratory at the Election of the Patron. *Vide Moore Caſe* 609. So as, if he pleaſed, he might preſent *ſans* Notice, and if he would not preſent, no Lapſe would incur againſt him, and this at Common Law before the Stat. 21 *H.* 8. where the Incumbent had not a Diſpenſation. To the ſecond Point it was reſolved alſo by all the Juſtices, that the Statute 21 *H.* 8. is ſo general, that the Judges ought to take Notice of it without Pleading. To the third Point they agreed, that the Queen might grant Diſpenſations as the Pope might in ſuch Caſes where the Biſhop had not Authority by the Stat. 25 *H.* 8. to grant Diſpenſations; becauſe that all ſuch Authority as the Pope uſed (*tho' by Uſurpation*) is given to the Crown. But yet the Statute, as to ſuch Diſpenſations which the Archbiſhop is to grant, hath negative Words in it, namely, that all Diſpenſations ſhall be granted in Manner and Form following, and not otherwiſe

wiſe (that is) the Archbiſhop ſhall make an Inſtrument under his Seal, &c. *Mo.* 542, 543.

8. *Plenarty.*

1. *Where to be tried.*

Plenarty, or not, of a Church ſhall be tried by the Biſhop where the Plenarty is made by Inſtitution; for that Inſtitution is a Spiritual Act; but where there is no Plenarty till Induction, then full, or not full, ſhall be tried by Verdict of twelve Men, according to the Common Law; for Induction is a Thing notorious and ſhall not be tried by the Biſhop. *Vide* 22 *H.* 6. 27, &c. And yet in ſome Caſes a Jury ſhall inquire of Plenarty, as in the ſame Caſe; and in all *Quare impedits* one of the three Points inquirable is, if the Church be full or not. 6 *Co.* 49. *a.*

9. *The Evils of Diſpenſations.*

1. By the ancient Canons and Councils *Un home ne puiſſoit aver forſque un benefice niſi in Caſe de Neceſſitie, ou Utilitie del Egliſe.* Dav. 79. a.

2. *Diſpenſation eſt Relaxatio Juris*, a permitting that to be done, which the Law had prohibited before. *Da. Le Caſe de Commenda, fo.* 69. *a.*

3. *Diſpenſatio eſt Vulnus quod vulnerat Jus Commune*, ſays one Canoniſt; and all Abuſes ſhall be reformed, ſays another, *ſi duo tantum*

tum verba, (viz.) *non Obſtante, non Impedirent*, were removed. *Dav.* 69. *b. Vide & nota tout le Caſe avec les Citations.*

4. 1 Tim. cap. 2. *Quod oportet Epiſcopum eſſe Doctorem & Hoſpitalem, experientia docet*, ſaith *Innocent* 6. *Extravagan. ca. Paſtoris, occaſionem Commendarum, Cultum divinum minui, curam animarum negligi, Hoſpitalitatem conſuetam & debitam non ſervavi, ruinis Ædificia ſupponi, &c.* Dav. 75. a. It is ſaid in the ſame Text, that a Biſhop ſhall be but *unius Uxoris vir*; by which it is intended (as the Canoniſts expound it) that he ſhall have but one Biſhoprick or Cure. They ſay, that by *Commendam, Bigamia contrahitur in Eccleſia*; and therefore a good and pious Biſhop ſaid when another Benefice was offered to him *in Commendam, abſit, ut cum ſponſa habeam Concubinam.* Dav. 75. a.

5. *Non Obſtante's* were firſt invented and uſed at the Court of *Rome*, for which *Marſil Pat.* pronounceth a Curſe againſt that Court for introducing them, which hath been a very bad Precedent, and miſchievous to all the Commonwealths in Chriſtendom; for Temporal Princes obſerving, that the Pope diſpenſed with his Canons, in Imitation of him, have uſed their Prerogative to diſpenſe with their Penal Laws and Statutes, whereas before they had cauſed their Laws to be religiouſly obſerved. See the Caſe of Penal Statutes. 7 *Co.* 36. *b. Dav.* 69. *b.*

6. *Commenda*, as the Canoniſts ſay, *eſt materia odioſa & reſtringibilis.* Palm. 460.

7. A Biſhop, by the ancient Eccleſiaſtical Laws of *England*, may not hold another Benefice,

nefice, with Cure, within his own Dioceſe; and if he have ſuch Benefice before his Promotion to his Biſhoprick, that it becomes void when he is created Biſhop; and this is the ancient Law of *England*, as is often ſaid in the Biſhop of *St. David*'s Caſe. 11 *H.* 4. and 41 *E.* 3. 5. *b.* and the Reaſon is, becauſe the Biſhop cannot viſit himſelf, and he who hath the Office of Sovereign may not retain the Office of a Subject, as *Hangford* ſaid in the ſaid Caſe of 11 *H.* 4. and upon this Reaſon it is ſaid, that if a Parſon be made a Dean, the Parſonage becomes void; for that the Dignity and Benefice are not compatible: Alſo no Eccleſiaſtical Perſon by the ancient Canons and Councils could have two Benefices with Cure *ſimul & ſemel*, but the firſt became void by accepting the Second, and this was the ancient Law of *England*, long before the Statute 21 *H.* 8. which was made in Affirmance of it, as appears in *Holland*'s Caſe, 4 *Co.* and with this agree the Books, 24 *E.* 3. 33. 39 *E.* 3. 44. *a.* and *Fitzh. Nat. Br.* 34. L. and the Text of the Canon Law, which is the proper Fountain of this Learning, *L. b. Decretal. titul. de Præbendis & Dignitatibus, Cap. de multa*, proves this clearly, where it is ſaid *De multa Providentia fuit in Lateranenſi Concilio prohibitum, ut nullus diverſas Dignitates Eccleſiæ, vel plures Eccleſias Parochiales reciperet contra Sanctorum Canonum Inſtituta, &c.* and then goes on again, *quicunque receperit aliquod Beneficium, curam habens animarum annexam, ſi prius tale Beneficium habebat, eo ſit ipſo Jure privatus, & ſi forte illud retinere contenderit, etiam alio ſpolietur, &c.*

&c. *Circa ſublimes tamen & literatas Perſonas, quæ majoribus Beneficiis ſunt honorandæ (cum ratio poſtulaverit) per ſedem Apoſtolicam poterit diſpenſari.* And herewith agrees the Text *in lib. Decretor. cauſa* 21. *Queſt.* 1. *In duabus Eccleſiis Cleric. conſcribi nullo modo poteſt, &c.* Dav. 68. b. 69. a.

8. On great Abuſes being found from the granting theſe *Commenda's* (for *omnium rerum quarum eſt uſus, poteſt eſſe abuſus, Virtute ſolum excepta*, ſaith *Ariſtotle*). Another Canon was made in the Council of *Lions*, *anno Dom.* 1274. for Reformation thereof, as appears *Lib.* 6 *Decretal. de Elect. & Elect. poteſtat. Cap. Nemo. Nemo deinceps Parochialem Eccleſiam alicui non conſtituto in legitima ætate, vel ſacerdotio commendare præſumat, nec tali, niſi unam, & evidenti neceſſitate vel utilitate Eccleſiæ ſuadente. Hujuſmodi autem Commendam rite factam declaramus ultra ſemeſtre temporis ſpatium non durare.* But the *Gloſs* ſaith, *iſta Conſtitutio non comprehendit Romanum Pontificem*; ſo it ſhould ſeem the Pope, notwithſtanding this Canon, had Power to give Benefices *in perpetuam Commendam.* Dav. 79. a. And this Power they reduced into Practice throughout Chriſtendom, eſpecially the Popes who reſided at *Avignon* in *France* in the Time of *H.* 2. *E.* 2. *E.* 3. were ſo liberal, not only in making Proviſions (againſt which our Statutes were made *temporibus E.* 1. *E.* 3.) but alſo in giving all Sorts of Eccleſiaſtical Benefices *in Commendam perpetuam*; and tho' at firſt theſe were given for the Support of the Dignity of Cardinals, as was profeſſed by Pope *Clement* 6. in his Epiſtle to *E.* 3. which is in

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the Hiſtory of *Walſingham*, *fo.* 150. *b.* Yet after theſe Graces were purchaſed by other Eccleſiaſtical Perſons of all Degrees in all Nations of Chriſtendom, and eſpecially in *England* and *Ireland*; for *Domeſticis Exemplis abundamus*, *viz.* That ſuch Faculties, or Diſpenſations to hold Eccleſiaſtical Dignities and Benefices *in Commendam perpetuam* were granted and obtained in the Court of *Rome*. In the Time of *H.* 3. *viz.* *Anno Dom.* 1253. *Mat. Paris Hiſt. Mag.* 848. the great Clerk, *Robert Grotshead*, Biſhop of *Lincoln*, who oppoſed himſelf ſtrongly againſt the Proviſions of the Pope, complains there of this new Proviſion by Way of *Commenda*, *&c.* Dav. 79. a. b. Alſo it appeareth by the Book 41 *E.* 3. 5. that one *W.* having a Prebend in the Cathedral Church of *Sarum*, to which the Pope, before his Conſecration, had given him the Benefices which he had before; and the King reciting this Gift of the Pope, granted to him his Temporalties: Whereupon it was adjudged, that this Prebend did not become void; but that the Biſhop ſhould retain after his Conſecration. It appears alſo in the Caſe of the Biſhop of *St. David's*, 11 *H.* 4. That in the Time of *E.* 3. *Edmund le Moigne de Bury*, who was attendant in the Court of *E.* 3. had many Benefices by ſuch Diſpenſation, as is obſerved there by *Thirning*, *fo.* 229. *b.* Alſo *Hangford* ſaid in the ſame Caſe, *fo.* 191. *a.* That a Man had been Abbot of *Glaſtonbury*, and Biſhop alſo of another Church *ſimul & ſemel*, and had the Poſſeſſion of them and the Dignity at one and the ſame Time. Alſo the principal Caſe 11 *H.* 4 ſhews,

ſhews, that *Henry Crichley*, who was afterwards Biſhop of *Canterbury*, being a Prebendary in the Cathedral Church of *Sarum*, was elected Biſhop of *St. David*'s; and before his Conſecration, the Pope reciting by his Bull, that he was elected Biſhop of *St. David*'s, granted to him a Faculty and Power to hold and enjoy all his other Benefices till the Pope had otherwiſe ordained, &c. And that ſuch Faculties and Diſpenſations were granted in the Court of *Rome* in the Time of *H.* 5. appears in *Linwood*, *Lib.* 3. *de Præbend. Cap. Audiſtis*, *Verb. Diſpenſatione.* And in the Time of *H.* 6. *Beaufort*, the King's great Uncle, being made Cardinal, obtained a Diſpenſation from the Pope to retain the Biſhoprick of *Wincheſter* in *Commendam*; and tho' it was then held, that this Diſpenſation came too late, being granted after the Biſhop was created Cardinal; yet after in the Time of *H.* 8. Cardinal *Woolſey*, having, before he was made Cardinal, obtained a Bull from the Pope to retain the Archbiſhoprick of *York*, as perpetual Adminiſtrator, and the Abbey of *St. Albans in perpetuam Commendam*, he held both during his Life, by Virtue of this Diſpenſation. *Vide* 27 *H.* 8. 15. *b.* From which Examples and Authorities it appears, that before the making of the Statutes of Faculties ſuch Diſpenſations were had and obtained in the Court of *Rome* to hold *in Commendam* Eccleſiaſtical Benefices in *England*; and as to *Ireland* theſe Diſpenſations of the Pope were ſo frequent there in the Time of *E.* 4 that an Act of Parliament was made againſt theſe *Commendams* granted by the Pope

Pope to Eccleſiaſtical Perſons of that Value. *Vide le Stat.* of 7 *E.* 4. *cap.* 2. where it is recited, that now of late divers Men of Holy Church ſuing to the Court of *Rome* have purchaſed Bulls from the Holy Father, the Pope, to have as well Abbies, Priories, and other Dignities, as Parſonages and Vicarages *in Commendam*, to the Extinguiſhment of Divine Service, *&c.* By which Statute it is ordained, that whatſoever Man of Holy Church does purchaſe any Manner of Dignity, Parſonage, or Vicarage, by Bulls of the Pope to hold *in Commendam*, and the ſaid Bulls, Parſonages, or Vicarages does accept, he ſhall be out of the King's Protection, *&c.* and that no Pardon or Licence of the King made, or to be made, be available in this Behalf, but be utterly void, if it be not by Act of Parliament: And this ſpecial Statute againſt the *Commendams* of the Pope was made in the Realm of *Ireland*, becauſe that the Statute made againſt Proviſors in the Time of *E.* 3. ſpoke only of Reſervations, Collations, and Proviſions of the Pope, which Words did not extend to *Commendams*, as *Hankford* held. 11 *H.* 4. 213. *a. Dav.* 79. *a. b.* 80. *a. b. For this Doctrine of* Commenda's (*as I conceive*) *was a novel Trick and Device of the Pope and Churchmen, to hold and exerciſe the Uſurpations of the Pope, and to keep up the pretended Independency of the Church, and diſloyal Churchmen on the Crown and Laws of theſe Realms, to the Diſinheriſon of the Crown of it's juſt Prerogative, and of the Subject of his undoubted Right and Privilege.*

10. One great Miſchief of Pluralities is, that thoſe who had Pluralities of Benefices could not diſcharge their paſtoral Duties, which belonged to their Functions, which Functions they had to all Intents by Inſtitution before Induction; and in the Judgment of our Law he who hath Inſtitution to a Benefice hath accepted it; for the Church is full by Inſtitution before Induction. As to the general Miſchief of Pluralities, *vide Tome* 5. *Generalium Concilior.* Page 368. c. 64. *Res ipſa loquitur plura Beneficia potiſſimum quibus Animarum Cura ſubmiſſa eſt, non ſine gravi Eccleſiarum damno ab uno obtineri, cum unus in pluribus Eccleſiis rite officia perſolvere, aut rebus earum neceſſariam Curam impendere nequeat.* By which what was the great Miſchief before the ſaid Council of *Lateran* appeareth. 4 *Co.* 79. *b.*

11. *Diſpenſatio eſt provida relaxatio Mali prohibiti, Utilitate vel Neceſſitate penſata.* Palm. 476.

10. *Diſpenſations in* Ireland.

1. *When, and how granted.*

1. By Force of the Statute for that Purpoſe the Commiſſioners in *Ireland* have the ſame Authority in that Kingdom, as the Archbiſhop of *Canterbury* hath in *England*, by the Stat. 25 *H.* 8. which gives Authority to the Archbiſhop of *Canterbury* to grant all Faculties and Diſpenſations, &c. for Cauſes not contrary or repugnant to the Holy Scriptures and the Law of GOD, which have

uſed in Time paſt to have been uſed and obtained in the Court of *Rome*, and all other Faculties and Diſpenſations which ſhall be for the Honour of the King and Profit of the Realm; and that all Acts to be done according to ſuch Faculties ſhall be firm and remain in Force, notwithſtanding any foreign Law, Decree, Canon or Decretal, &c. *Dav.* 73. *b.*

2. A Diſpenſation for a Benefice in *Ireland* is good under the Great Seal of *England* only, as *Ireland* is ſubject to *England*. Palm. 458, 459.

7. *Conſiſtory Court.*

1. *What it is.*

1. EVery Archbiſhop and Biſhop of every Dioceſe hath a conſiſtory Court held before his Chancellor, or Commiſſary, in his Cathedral Church, or other convenient Place of his Dioceſe. *Blo. Law Dict. ſub* Tit. *Conſiſtory.*

2. *It's Etymology, and to whom it belongs.*

Conſiſtory, *Conſiſtorium* ſignifies as much as *Prætorium*, or Tribunal; it is commonly uſed for a Council-houſe of Eccleſiaſtical Perſons, or the Place of Juſtice in the Court Chriſtian; a Seſſion or Aſſembly of Prelates. *Blo. Law Dict. ſub hoc Tit.*

3. *Where*

3. *When ſeparated from the Temporal Courts.*

1. Eccleſiaſtical Cauſes were handled in the Sheriff's Tourn, in the Reign of *H.* 1. and certain it is (ſays Lord *Coke*) that the Biſhop's Conſiſtories were erected, and Cauſes Eccleſiaſtical removed from the Tourn to the Conſiſtory after the making of the Red Book (*which was compoſed tempore H.* 1.) 4 Inſt. 260.

2. *W.* 1. *Communi Conſilio & Conſilio Archiepiſcoporum, Epiſcoporum & Abbatum, & omnium Principum, & Baronum Regni*, inſtituted the Courts for holding Pleas of Eccleſiaſtical Cauſes to be diſtinct and ſeparate and apart from thoſe Courts which had Juriſdiction of Civil Cauſes. *Ha. Hiſt. Law* 102.

4. *Who Judges of, and where holden.*

1. *General.*

The Conſiſtory Court of every Archbiſhop and Biſhop of every Dioceſe in Eccleſiaſtical Cauſes is holden before his Chancellor in his Cathedral Church, or before his Commiſſary in Places of the Dioceſe far remote and diſtant from the Biſhop's Conſiſtory, ſo as the Chancellor cannot call them to the Conſiſtory without great Travel and Vexation. 4 *Inſt.* 338.

2. *The Power but delegated.*

The Power of a Chancellor, or Vica General, is only delegated in Eaſe of th Biſhop, and he may ſit and judge himſelf, i he pleaſes. *Watſon*, Biſhop of *St. David'* Caſe in *Salk.*

3. *Where, and of what, hath Juriſdiction.*

1. Commiſſary, *Commiſſarius*, is a Tit of Eccleſiaſtical Juriſdiction belonging t one who exerciſeth Spiritual Juriſdiction i ſuch Places of the Dioceſe far diſtant fro the chief City, as the Chancellor cannot ca the Subjects to the Biſhop's Principal Cou ſiſtory, without too great Inconvenience Labour and Expence; he is called *Commi ſarius* or *Officialis foraneus.* Linw. Pro cap. 1. 4 Inſt. 338. and is ordained to th ſpecial End, namely, to ſupply the Biſhop Juriſdiction and Office in the Out Places the Dioceſe, or elſe in ſuch Pariſhes as a peculiar to the Biſhop, and exempted fro the Juriſdiction of the Archdeacon; f where either by Preſcription, or Compo tion, Archdeacons have Juriſdictions with their Archdeaconries, as in moſt Places th have, this Commiſſary is but ſuperfluou and, as Doctor *Cowel* ſays, moſt common doth rather vex and diſturb the Country f his *Lucre* than of Conſcience ſeek the R *dreſs, or Reformation*, of the Lives of Offe ders; and therefore the Biſhop taking Pr

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ſentation-money of his Archdeacons yearly *pro exteriori Juriſdictione*, as it is ordinarily called, doth by Superonerating their Circuit with a Commiſſary, not only wrong Archdeacons, but the poorer Sort of Subjects much more, as common Practice daily teacheth to their great Woe. *Cow. Int. & Blo. Law Dict. & les Termes de l'Ley ſub hoc Tit.*

2. The Commiſſary cannot diſable the Plaintiff, if he be not Commiſſary of Record, as the Archdeacon of *Richmond* in Vacation Time, and the Dean and Chapter of *Canterbury* in Vacation Time, *&c. Fitzh. Abr. Excom.* 16. So of the Abbot of *St. Albans*, *&c.* being but a private Juriſdiction, *&c. Fitzh. Abr. Excom.* 17, 20.

5. *Appeals from.*

1. *Whereto, and in what Time.*

1. From the Conſiſtory Courts holden by the *Chancellors, or Commiſſaries*, Appeal is to the Provincial or Archbiſhop of either Province reſpectively. 4 *Inſt.* 338.

2. Appeal to be from the Archdeacon, or Commiſſary of the Archbiſhop, if the Matter be there commenced within fifteen Days, *&c.* to the Audience or Arches of the ſaid Archbiſhop, and from thence within other fifteen Days, *&c.* to the Archbiſhop himſelf and no farther; and if the Cauſe be before the Archbiſhop, then to be there definitively determined *ſans* further Appeal, *as the Law then ſtood.* 4 *Co.* 339. Vide *Appeals.*

8. *Archdeacon.*

1. *General to.*

EVery Dioceſe is divided into Archdeaconries, whereof there are Sixty, and the Archdeacon is called *Oculus Epiſcopi*, and every Archdeaconry is parted into Deaneries, and they into Pariſhes, Towns, and Hamlets. *Co. Lit.* 94. *a.*

2. *His Court and Authority.*

1. *Is from the Biſhop.*

Archdeacon; his Power was derived from the Biſhop. *Hob.* 16.

2. *Subordinate to the Biſhop.*

1. The Archdeacon is ſubordinate to the Biſhop. *Hob.* 16.

2. The Archdeacon is but *Miniſter Epiſcopi*, and in his Precepts to thoſe of the Clergy to execute he doth as a Sheriff doth, who in his Precept to his Bailiffs recites his Mandate. 1 *Vent.* 320.

3. *Where this Court holden, and its Juriſdiction.*

The Court of the Archdeacon, or his Commiſſary, is held where and in what Places

Places the Archdeacon, either by Preſcription or Compoſition, hath Juriſdiction in Spiritual Cauſes within his Archdeaconry. 4 *Inſt.* 339.

3. *The Acts of the Archdeacon.*

1. *Miniſterial.*

1. *Induction.*

The Archdeacon, who makes Induction, does it as a miniſterial Officer, who gives nothing by this Act; for the Clerk is compleat Incumbent to all Perſons and Intents, ſave to the King, who hath a ſpecial Prerogative that Plenarty ſhall not incur againſt him *ſans* Induction, as in *Dyer* 347. in *Weſton's* Caſe; but the Induction is nothing but a Ceremony to give Notice of Poſſeſſion, the Subſtance being performed before by the Inſtitution. *Mo.* 442.

4. *Appeals.*

1. *To whom to be.*

1. From the Archdeacon, or his Commiſſary, the Appeal is to the Dioceſan. 4 *Inſt.* 339.

2. It was the Opinion of the Court, that if a Suit be before an Archdeacon, whereof by the Stat. of 23 *H.* 8. the Ordinary may licence the Suit to an higher Court, that the Archdeacon cannot in ſuch Caſe baulk his

Ordinary, and ſend the Cauſe immediately into the Arches; for he hath no Power to give a Court, but to remit his own Court, and to leave it to the next; for ſince his Power was derived from the Biſhop, to whom he is ſubordinate, he muſt yield it to him of whom he received it; and it was ſaid, that ſo it had been ruled heretofore. *Hob.* 16.

3. From the Archdeacon, or his Official, if the Matter be there commenced, to the Biſhop of the Dioceſe and from him or his Commiſſary in ſuch Caſe; or if the Matter be there commenced within fifteen Days after Sentence given, to the Archbiſhop of the Province, and no further, *as the Law then ſtood.* 4 *Inſt.* 339.

4. *Item*, From the Archdeacon, or Commiſſary of the Archbiſhop, if the Matter be there commenced within fifteen Days, *&c.* to the Audience or Arches of the ſaid Archbiſhop; and from thence, within other fifteen Days, *&c.* to the Archbiſhop himſelf, and no farther. And if the Cauſe be commenced before the Archbiſhop, then to be there definitively determined without further Appeal, *as the Law then was.* 4 *Co.* 339.

9. *The Court of Delegates.*

1. *What; wherefore ſo called, and of what Matters they have Juriſdiction.*

1. DElegates are Commiſſioners appointed, by Letters Patent, to determine Appeals upon Things Teſtamentary, or Matrimonial,

trimonial, in which Sentence hath been given. *Terms de la Ley*, Tit. *Delegates.*

2. The Court of Delegates, and conſequently of Appeals, is ſo vulgarly called, becauſe the Delegates do ſit by Force of the King's Commiſſion under the Great Seal upon an Appeal to the King in the Court of Chancery. 4 *Inſt.* 339.

3. The Court of Delegates ſit upon Appeals to the King in Chancery in three Cauſes. Firſt, When a Sentence is given in any Eccleſiaſtical Cauſe by the Archbiſhop, or his Official. Secondly, When any Sentence is given in any Eccleſiaſtical Cauſe in Places exempt. Thirdly, When a Sentence is given in the Admiralty Court (*with which, as being foreign to our preſent Purpoſe, we ſhall not at this Time meddle*) in Suits Civil and Marine, by the Order of the Civil Law. 4 *Inſt.* 339.

4. Theſe Commiſſioners are called Delegates, becauſe they are delegated by the King's Commiſſion for theſe Purpoſes. 4 *Inſt.* 339.

5. This Court is the ſupreme Judicature in Eccleſiaſtical Cauſes in this Kingdom. See Caſe *Hoſier* and *Hawes*, *under the Court of the Commiſſioners of Review, in what Caſes and by what Authority they have Juriſdiction, Caſe* 2.

2. *Their Sentences.*

1. *They may excommunicate.*

1. Delegates may proceed to Sentence of Excommunication and certify the ſame, as appears by *Dy.* 371.

2. Upon

2. Upon ſuch Certificate made according to Law, a *Significavit* or *Ca. Excom.* ſhall be awarded out of Chancery for the Taking and impriſoning of the Bodies of ſuch excommunicated Perſons. 4 *Inſt.* 327, 329.

2. *The Conſequences thereof.*

Vide ante, *Excommunication*, what, the Sorts, and the Writs conſequential thereof.

10. *The Court of the Commiſſioners of Review* ad Revivend'.

1. *By what Authority, and in what Caſes they have Juriſdiction.*

1. NOTE; in Caſe where a Sentence is given by the Commiſſioners delegated by the Prince, as by the late Viſitors, *Anno* 1 *Eliz.* the Party grieved appealing, ſuch Appeal is out of the Orders preſcribed by the ſaid Statute, and the Prince in that Caſe may grant a new Commiſſion to others to determine that Appeal. *Et ceo fuit fait per l'Opinion del pluſors des Juſtices en le Caſe de Goodman deprive del Deanry de Wells.* 4 Inſt. 340.

2. Tho' the Acts 24 & 25 *H.* 8. do upon certain Appeals make the Sentence definitive, as to any Appeal; for the Words are (*ſhall be definitive*) and that no further Appeal ſhould be made or had; yet the King, after ſuch a definitive Sentence, as ſupreme Head, may grant a Commiſſion of Review,

ad

ad revivend', &c. for two Cauſes. Firſt, for that it is not reſtrained by the Statute. Secondly; for that after definitive Sentence the Pope, as Supreme Head, by the Canon Law, uſed to grant a Commiſſion *ad revivendum*; and ſuch Authority as the Pope had, claiming (*tho' by Uſurpation, as it was no leſs*) as Supreme Head, doth of Right belong to the Crown and is annexed thereunto by the Stat. 26 *H.* 8. *cap.* 1. and 1 *Eliz. cap.* 1. and ſo it was reſolved in the King's Bench, *Trin.* 39 *Eliz.* where the Caſe, was that Sentence being given in an Eccleſiaſtical Cauſe in the Country, the Party grieved appealed according to the ſaid Act of 25 *H.* 8. to the Archbiſhop before whom the firſt Sentence was affirmed. Whereupon, according to the ſame Statute of 25 *H.* 8. he appealed to the Delegates, before whom both the ſaid former Sentences were repealed and made void by definitive Sentence; and thereupon the Queen, as Supreme Head, granted a Commiſſion of Review, *ad revivend.* the Sentence of the Delegates; and on this Matter a Prohibition was prayed *in Banco Regis* pretending the Commiſſion of Review was againſt Law; for that the Sentence before the Delegates was definitive by the Stat. 25 *H.* 8. But upon mature Deliberation and Debate, the Prohibition was denied; for that the Commiſſion for the Cauſes aboveſaid was reſolved to be lawfully granted, and Precedents were cited in this Court (*Banco Regis*) in *Michelot*'s Caſe, *Anno* 29 *Eliz.* and in *Goodman*'s Caſe, and *Huet*'s Caſe, in 29 *Eliz.* alſo ſee the Stat. 8 *Eliz. cap.* 5. and obſerve like

like Words in that Stat. *ut ſupra*, 4 *Inſt.* 341. Upon a Sentence given by the High Commiſſioners, a Commiſſion of Review might ſo have been granted to and for the Party grieved, as by an expreſs Clauſe in that Commiſſion appeareth, and if no ſuch Clauſe had been therein, yet a Commiſſion of Review might have been granted. *Quia ſicut Fontes communicant aquas Fluminibus cumulative, non privative; ſic Rex ſubditis ſuis Juriſdictionem committat in Cauſis Eccleſiaſticis Vigore Statuti in hujuſmodi Caſu editi & proviſi cumulative, non privative*, by Conſtruction upon that Statute. 4 *Inſt.* 341.

Anno 1739. Di. *Hoſier* and *Hawes* Clerk.

* 2. There had been Tedious, Vexatious, and expenſive Litigations in the Eccleſiaſtical Courts, concerning the perſonal Eſtate of the late Vice-Admiral *Hoſier*, between this Woman pretending herſelf Widow of the ſaid late Vice-Admiral, and the ſaid *Hawes*, who claimed as his next of Kin, and after ſeveral Sentences againſt her, and particularly one in the Court of Arches, and another before the Delegates, in Affirmance of that in the Arches; ſhe petitioned his Majeſty for a Commiſſion of Review, and *Hawes* alſo petitioned his Majeſty againſt the ſame being granted; the Conſideration of which Petition his Majeſty was pleaſed to refer to the Right Honourable the Lord High Chancellor. In Obedience to which Order of Reference, his Lordſhip reported his Opinion, upon the whole Matter to his Majeſty in Council; that his Lordſhip had conſidered the Petition, and found that the Petition preferred in the Name of *Diana Hoſier*,

Hoſier, prayed a Commiſſion of Review, to examine and review a Sentence pronounced by the Court of Delegates, on or about the 26th of *February* then laſt paſt, whereby the ſaid Sentence of the Prerogative Court appealed from by the ſaid *Diana*, had been affirmed: And that the Petition of *Hawes* prayed, that ſuch Commiſſion might not be granted, and that *Diana*'s Petition might be diſmiſſed. His Lordſhip obſerved, that the general Queſtion in the Cauſe was admitted to be, whether *Diana* was intitled to the Adminiſtration of the ſaid Vice-Admiral's Perſonal Eſtate as his Widow, or whether the other Petitioner *Hawes* was intitled thereunto, as his next of Kin; and this Queſtion his Lordſhip took Notice depended on the following *Matter of Fact*, whether the ſaid *Diana* was married to the ſaid late Vice-Admiral or not, which after a long Litigation, the Judge of the Prerogative Court had determined and ſentenced againſt the ſaid *Diana*; and decreed Adminiſtration to the ſaid *Hawes:* Which Sentence was, after ſeveral Hearings affirmed by the Court of Delegates. His Lordſhip further certified, that upon peruſing all the Proofs, and conſidering the ſame together with what had been alledged, by the Counſel on both Sides, he conceived, that the Sentences which had been pronounced, were agreeable, and warranted by the Strength and Weight of the Evidence; and that it further appeared, that divers ſiniſter and corrupt Practices had been made uſe of by the ſaid *Diana* in Support of her pretended Marriage, that this Cauſe had then been depending

pending near eleven Years, and that two conformable Sentences had been pronounced upon the Merits thereof, the one in the Prerogative Court, and the other in the Court of Delegates, the ſupreme Judicature in Eccleſiaſtical Cauſes in this Kingdom; and as to the Allegation in the Petition, preferred in the Name of the ſaid *Diana*, that a Verdict had been obtained in a Trial in *Kent*, before the late Lord Chief Juſtice *Eyre*, in an Ejectment brought for certain Lands in that County, on the Title of *Richard Hart* and *Frances Diana*, his Wife, the ſaid Petitioner, *Diana*'s Daughter, whereby the Validity of the ſaid Petitioner's Marriage was allowed: His Lordſhip apprehended ſuch Allegation to be improperly inſerted in the ſaid Petition; becauſe *Hawes* not being a Party in that Suit, the Verdict given therein neither was nor could be made Uſe of in Evidence againſt him. And from the Proofs laid before his Lordſhip he apprehended, it appeared highly probable, that the ſaid Verdict was principally founded on the Evidence of one *Francis Phillips* (a Clergyman) who was alſo examined in this Cauſe on the Part of the ſaid *Diana Hoſier*, and who was proved guilty of wilful and corrupt Perjury, by the Procurement of the ſaid *Diana*; and that in ſo groſs a Manner, that (altho' his Teſtimony, if true, had been ſome of the moſt material in her Favour) yet her own Counſel did not think fit to read his Depoſition in the Court of Delegates; for which Reaſon, and in regard that the Granting of Commiſſions of Review is not a Matter of Right, but of

Diſcretion in his Majeſty, to be regulated by the Circumſtances of each particular Caſe, his Lordſhip was of Opinion, that it was not adviſable for his Majeſty to grant ſuch Commiſſion in the preſent Caſe. On Conſideration of which Report, his Majeſty was pleaſed, with the Advice of his Privy Council, to order that no Commiſſion of Review ſhould in this Caſe be granted; but that the ſaid *Diana*'s Petition ſhould be diſmiſſed.

Nota; *The Diſpute concerning the Title to the Real Eſtate of the ſaid late Vice-Admiral is not to this Day determined, the ſaid* Diana *and her Daughter, and* Hart *in her Right, having gotten the Poſſeſſion by ſuch Perjury as hath been mentioned to have been committed by Parſon* Phillips *and other undue Practices of the ſaid* Diana *and her Confederates, by ſetting up ſeveral Claimants to the ſaid Real Eſtate, as well as by other Artifices, too many, too tedious and unneceſſary to be here particulariſed.*

2. *How they proceed.*

1. *According to the Common Law.*

If Commiſſioners do not proceed to examine according to the Common Law, they ſhall be reſtrained by Prohibition. *Mo. fo.* 462, 463.

IV. *The*

IV. *The Eccleſiaſtical Courts ſubordinate and Subject to the Controul of the Superior Temporal Courts in theſe Caſes.*

A. *Where the Juriſdiction of theſe Courts come in Queſtion, or any Law is to be expounded concerning them.*

B. *Where the Eccleſiaſtical Courts are irregular in their Proceedings, or act oppreſſively, or injuriouſly, or either Want, or exceed their Juriſdiction.*

C. *Where they are either informal in their Proceedings, or they proceed againſt Law; or where*

is a Variance between the two Laws; or where Matter Temporal is mixt, or falls in incidentally with Matter of Eccleſiaſtical Cognizance; or the Matter is of ſuch a Sort as they may not deal in, as being either prohibited them by Statute Law; or is otherwiſe cognizable at Law; or hath been there determined already, &c.

A. *Where the Juriſdiction of theſe Courts comes in Queſtion, or any Law is to be conſtrued concerning them.* 322.

I. *The Office of the Temporal Courts and Judges in ſuch Caſes, with Regard to theſe inferior Courts.*

1. *General.*
2. *Rules.* 327.
3. *Their Writs.* 328.

1. *To whom to be directed.*

II. *These Courts inferior, and subordinate.*

330. 1. *In General.*
2. *Where Ecclesiastical Jurisdiction comes in Question.*

332. 3. *As to the Exposition of Statutes, though concerning the Ecclesiastical Laws and Courts themselves.*

4. *As to the Construction of their Canons and Constitutions.*

333. 1. *Who to construe.*

1. *The King, his Parliament and Judges.*

336. 2. *Whether the same, or any, and which of them have been questioned.*

A. *Where the Jurisdiction of these Courts comes in Question, or any Law is to be construed or expounded concerning them.*

I. *The Office of the Temporal Courts and Judges in such Cases, with Regard to these inferior Courts.*

1. *General.*

1. HAving thus taken a View of the several Ecclesiastical Courts, the next Matter to

be conſidered, in the Order I have propoſed my ſelf, is firſt, the Office of the Superior Temporal Courts, with Regard to their Superintendency over the Eccleſiaſtical Courts; as alſo their Power of determining Matters concerning Eccleſiaſtical Juriſdiction, (in which Caſes the Temporal Courts are to determine, and not only ſo, but even the Juriſdiction it ſelf, whenever the ſame comes in Queſtion, is to be ſettled in the Temporal Court; and that though the Parties between whom, as well as the Court, and Matter, about which, they contend to have Juriſdiction, be meerly of Eccleſiaſtical Cognizance, and ſuch as ſuch Court, by interpoſing its Authority, and determining Eccleſiaſtical Juriſdiction, hath not primary Juriſdiction of; but muſt refer and leave to the Determination of ſuch Court Spiritual as that Temporal Court ſhall adjudge the Juriſdiction for.) The next Thing I ſhall proceed to, is the Authority of the Superior Temporal Courts, and their Office, in reſpect of theſe inferior Courts, where they ſcheme and purſue undue Means to enforce and compel Obedience to their Sentences; and how ſuch Sentences are affected by the King's Pardon. Then I ſhall go on to the Inferiority, and Subordination of theſe Courts to the King, his Magiſtrates, and Superior Temporal Courts; in the Conſtruction of Statutes, or Acts of Parliament, and that though they be concerning Matters meerly Spiritual and of Spiritual Cognizance, and not only ſo, but in the Conſtruction of their very Canons and Conſtitutions themſelves. Then I ſhall produce Caſes, to demonſtrate, how, when, and wherefore theſe Courts are limited and reſtrained by the Temporal Courts, where theſe Courts either

act oppreſſively or injuriouſly, or where they ca
not adminiſter Right, or either want, or e
ceed their Juriſdiction, or are either incerta
or informal in their Proceedings, or would i
peach a Judgment at Law; or where they pr
ceed againſt Law, or refuſe to admit ſuch Ple
Cuſtom, Preſcription, or Evidence as would
good and allowed at Law; or where they r
fuſe to deliver the Defendant a Copy of t
Charge againſt him, (as the Libel or Inter
gatories) in which laſt Caſes they are reſtra
ed by the Superior Temporal Courts from P
ceeding, meerly on Account of their refuſ
ſuch Matters as they ought to allow, by t
Rules of Common Law, or elſe becauſe th
refuſe the Party a Copy of the Charge againſt hi
and which is due to him of common Right, a
in Equity and Juſtice; for that without th
he cannot, or not properly, make his Defenc
In all which Caſes they are prohibited by t
Temporal Courts, without ſuch Temporal Cou
ever looking into the Merits of the Cauſe,
whether within their Juriſdiction, or not,
whether they are regular in their Method
Proceeding, &c. but meerly for theſe Negle
And having done this, I hold it regular to ſu
the Authority of the Temporal Courts over th
Courts, where is either any Variance betwe
the two Laws, or where Matters temporal
mixt, or fall in incidentally with Things
Eccleſiaſtical Cognizance, and then, as I t
it, it may be neceſſary to refer to ſome Ca
where the Common Law Courts do indulge,
allow the Eccleſiaſtical Courts to hold Plea
Matters which do not ſtrictly belong to th
on account of the Aptneſs of the Remedy wh
the Eccleſiaſtical Courts, in ſuch Caſes gi

I conceive Prohibitions, &c. are not of right to be demanded, but granted Ex Gratia, *in Caſes where the Wiſdom of the Superior Temporal Judges and Courts, find them neceſſary, according to the Circumſtances of ſuch ſeveral Caſes; and therefore the Temporal Courts may, and do ſometimes, allow theſe Courts to apply their Remedies, where they, the Temporal Courts, have not ordinary Redreſs of their own, apt and adequate to the Caſe, and that for Convenience; of which Convenience they only are Judges.*

2. As the Body of Man, ſays Lord *Coke*, is beſt ordered, when every particular Member exerciſeth its proper Duty: So the Body of the Commonwealth is beſt governed when every ſeveral Court of Juſtice, executeth its proper Juriſdiction: But if the Eye, whoſe Duty is to ſee, the Hand to work, the Feet to go, ſhall uſurp and incroach, one upon another's Work; as the Hands or the Feet, the Office of the Eyes, and the like; theſe ſhould aſſuredly produce Diſorder, and Darkneſs, and bring the whole Body out of Order, and in the End, to Deſtruction; ſo in the *Commonwealth*, (Juſtice being the main Preſerver thereof) if one Court ſhould uſurp or incroach upon another, it would introduce Incertainty, ſubvert Juſtice, and bring all Things, in the End, to Confuſion. *Proem to 4 Inſt.*

3. *Rerum Ordo confunditur, ſi unicuiq; Juriſdictio non ſervetur.* Proem to 4 Inſt.

4. This Kingdom hath been beſt governed, and Peace and Quiet preſerved, when both Temporal and Eccleſiaſtical Courts and Judges have kept themſelves, within their

proper Juriſdiction, without incroaching o uſurping one upon another; and that whe ſuch Incroachments and Uſurpations hav been made, they have been the Seeds great Trouble and Inconvenience, &c. 4 *In fo.* 321.

5. *Juriſdictio eſt Authoritas judicandi, ſi Jus dicendi inter Partes de actionibus Perſon rum & Rerum ſecundum deducta fuerunt Judicium per Authoritatem Ordinariam ſ delegatam*, and again *Juriſdictio eſt Pote de publico introducta cum Neceſſitate Juriſ cendi*, it is derived of *Jus & Ditio, i. e. P teſtas Juris.* Proem to 4 Inſt.

6. Wrong done by theſe Courts and the Officers in Relation to legal Proceeding are of two Sorts.

1. When they proceed in that where they have no Juriſdiction.

2. When they proceed in Cauſes where though they have Juriſdiction, yet the proceed erroneouſly.

1. The former of theſe is a Wrong and the Party hath Remedy, or Re lief by not ſubmitting, and bringing hi Action againſt them who exerciſe it.

2. By Prohibition from a Superio Court.

The other is, when they proceed erroneouſly in a Matter within thei Juriſdiction.

And there they are not puniſhable for a Man is not to be puniſhed fo Error in Judgment; but Relief ſhal be by Appeal. *Ha. Anal.* 120, 121 122.

7. The

7. The Judges and Sages of the Law for Matters in Law, are called *Conſilium Regis.* Co. Lit. 304. a. b. Hob. 163.

8. The King's Temporal Courts, by his immediate Authority, have Power derived from the King, to ſuſpend the Proceedings of the Eccleſiaſtical Courts, by Prohibition, &c. if Cauſe. *Ha. Anal.* 20.

9. The Temporal Courts muſt always have an Eye, that the Eccleſiaſtical Juriſdiction uſurp not upon the Temporal. 2 *Inſt.* 615.

10. The Judges of the Common Law do not look on themſelves as bound by the Rules of the Civil Law; but at Liberty to follow their own, where the two Laws differ. 1 *P. Will.* 12.

11. It is the Office of Judges to advance Laws made for Religion, according to their End, tho' the Words be ſhort and imperfect. *Magdalen College Caſe, Hob.* 157. *Vide* 2 *Inſt.* 615 & 616.

12. When any Thing is uſed to the Diſpleaſure of GOD, it hurteth not only the Body but the Soul. And Temporal Rulers have not only Cure of the Bodies, but alſo of their Souls, and ſhall anſwer for them, if they periſh in their Default. *Doct. & Stud. lib.* 1. *c.* 32. *fol.* 55. *b.* 56. *a.*

2. *Rules.* Vide *General, P.* 6.

1. *Summa eſt Ratio quæ pro Religione facit.* Jenk. 233. 5 Co. 14. b. 11 Co. 70. b. Hob. 295. 2 Chan. Caſ. 18.

2. *Favendum eſt Eccleſiæ quam Perſonæ.* 1 Ro. Rep. 452.

3. *Intereſt Reipublicæ, ne Maleficia remaneant impunita.* Jenk. 162, 166.

4. *W.* 1. *Ultimo, Summa Charitas eſt facere Juſtitiam, ſingulis omni Tempore quando neceſſe fuerit.* 11 Co. 70. b.

3. *Their Writs.*

1. *To whom to be directed,* &c.

1. THE Sheriff had returned upon a *Sci. fa.* that the Defendant was *Cl. beneficiatus non habens Laicum Feodum*; whereupon a *Fi. fa.* iſſued to the Biſhop, whereupon he uſed to ſequeſter (as they call it) the Eccleſiaſtical Poſſeſſions of the Defendant; but that is not properly a Sequeſtration; for the Ordinary muſt not return *Sequeſtrari feci*, but *Fi. feci*, or *Nulla bona*, as a Sheriff muſt do. And Lord *North* ſaid he had known this in Experience, that a Biſhop had been, in ſuch Caſe, ordered to amend his Return; for what the Ordinary, in ſuch Caſe doth, is in the Nature of a Temporal Officer; for the Sequeſtration, as they call it, is like the *Fi. fa.* he is in that Caſe (if he may be ſo called) *only* an Eccleſiaſtical Sheriff, and by Virtue thereof may do as the Sheriff doth in other Caſes; that is, he may ſeize Eccleſiaſtical Things and ſell them, as the Sheriff doth Temporal Things, upon a *Fi. fa.* but then he muſt return *Fi. fe.* and not *Sequeſtrari feci.* 2 *Mod.* 257.

2. *Trin.*

2. *Trin.* 2 *Geo.* 2. ——— v. *Young*, *B. R.* *

The Sheriff of *Wilts* had returned upon a *Sci. fa.* That the Defendant was *Eccleſiaſticus beneficiatus non habens Laicum Feodum*; whereupon a Writ iſſued to the Dean of *Sarum*, who had a Peculiar, to ſequeſter the Goods upon the Defendant's Benefice; a Rule had been made upon him to return his Writ; but upon the Return's being inſufficient, and the Plaintiff underſtanding the Official claimed the *Retorna Brevium*, by a Patent from the Crown, he obtained a Rule upon the Official to make a Return, and accordingly gave him the Writ: And after the Official made a Return, but ſent up no Writ at all; whereupon Mr. *Gapper*, now Serjeant, moved for an Attachment, againſt him upon the Contempt, but the Court ſaid, that the Rule which the Plaintiff had obtained upon the Official to make this Return was irregular; for they ſaid their Writs could only be directed to the Biſhop, or to the Peculiar; and they could not take Notice of any ſubordinate Offices in a Peculiar, and accordingly they diſcharged their firſt Rule upon the Official; and made a Peremptory one upon the Dean, who had the Peculiar, to make a Return; and they ſaid, you'l find a Way to get your Writ from the Official.

II. *Theſe*

II. *Theſe Courts inferior and ſubordinate.*

1. *In General.*

VIDE their Judges and Officers, bound to take Notice of the Temporal Laws. And alſo ſee their Judges, &c. Subordinate to the Temporal Courts. N° V and VII.

2. *Where Eccleſiaſtical Juriſdiction comes in Queſtion.*

1. THo' the Cauſe or Controverſy concerning the Juriſdiction be between Spiritual Perſons; as in the original Caſe it was between the Archbiſhop and the Suffragan Biſhop; yet the King is the indifferent Arbitrator in all Juriſdictions as well Spiritual as Temporal, and it is a Right of his Crown to diſtribute to them, or declare to them their reſpective Bounds. *Hob.* 17.

2. The Dioceſe of *Winton* extending to *Southwark* as Part of the County of *Surrey*, all which is in that Dioceſe, the Judge of the Audience of the Metropolitan, holding a Court ſometimes in *Southwark*, thought fit to cite Men thither who lived above ſixty Miles off; and if they did not appear, he was pleaſed to excommunicate them, and to refuſe them Abſolution; unleſs they would conſent to tranſmit the Cauſe to the Archbiſhop's Court, by which the Statute 28 *H.* 8. was illuded, a Prohibition lies, though

ſee p. 357.

it

it be concerning the Juriſdiction of two Spiritual Perſons; for the King ought to keep every Court within its juſt Bounds: And though formerly it had been conceived, that the Archbiſhop had a concurrent Juriſdiction within every inferior Dioceſe; yet that was not as Archbiſhop, but as *Legatus natus* to the Pope, for the Archbiſhop of *York* neither hath, nor claimeth any ſuch concurrent Juriſdiction in his Province; and then this Power of *Legatus natus*, *acquired* by *Anſelme*, *as hath been mentioned* before, is ended; being abrogated with the Pope, and the laſt Practice, if any ſuch was, was an Uſurpation; and if the Archbiſhop ſhould be admitted to ſet up a Court of Audience in every Dioceſe, he might take away all Cauſes out of inferior Courts. See *Ro. Abr.* *fo.* 313, 314. *Caſe* 8. and *Hob.* 17. *le meſme Caſe*, being Dr. *James*'s Caſe.

3. Eccleſiaſtical Juriſdiction and Power belongs to the Judges of the Common Law, to determine, 12 *Co.* 42. for were the Eccleſiaſtical Judges to determine of what Things they themſelves have Cognizance, and that they ſhould have Cognizance of all they pleaſed to allow to themſelves, they would make no Difficulty, ſays Lord *Coke*, *ampliare Juriſdictionem ſuam*. *Bracton* ſaith, *cum Judex Eccleſiaſticus prohibitionem a Rege ſuſcepit ſuperſedere debet in omni Caſu, ſaltem donec Conſtiterit in Curia Regia ad Quam pertinet Juriſdictionem; quia ſi Judex Eccleſiaſticus æſtimare debet an ſua eſſet Juriſdictio, in omni Caſu indifferenter procederet non obſtante Regia prohibitione.* On the Queſtion, whether Court Chriſtian had Cognizance of a Lamp,

Lamp, Prohibition went *Quod non procedant in Curia Chriſtian. quouſq; in Cur. noſtra diſcuſſum fuerit utrum cognitio placiti illius ad Curiam noſtram vel ad Forum Eccleſiaſticum pertinet.* The Judges at Law ſhall determine in what Caſes the Eccleſiaſtical Judges have Power to puniſh *pro Læſione Fidei.* 2 *H.* 4. 10. 11 *H.* 4. 88. 22 *E.* 4. 20. So of Bounds of Pariſhes. 5 *H.* 5. 10. 39 *E.* 3. 58. 12 *E.* 4. 9 *H.* 7. 1. 10 *H.* 7. 9. 12 *Co.* 42.

4. Reſolved, If any ſlander the Authority of the High Commiſſioners, it is to be puniſhed by the Temporal Judges; for that the Determination of their Authority and Power, which is given to them by Statute and the King's Letters Patent, belong to them, and not to Court Chriſtian. 12 *Co.* 42.

3. *As to the Expoſition of Statutes, though concerning the Eccleſiaſtical Laws and Courts themſelves.*

1. THE Judges in Courts Chriſtian may not expound the Statutes concerning themſelves; but the Courts at Law. *Hob.* 83, 84. *Vau.* 213.

2. The Expounding of Statutes even belonging to Eccleſiaſtical Government, or Proceedings, belongs to the Temporal and not to the Eccleſiaſtical Judges. 2 *Inſt.* 614, 618. *Vau.* 213.

3. The Judges are the only Expoſitors of Acts of Parliament, although they concern Spiritual

Spiritual Things. *Mar.* 90, 91. *Hob.* 437. 4 *E.* 4. 37, 38.

4. The Common Law, and the Judges of the Courts of the Common Law, have the Expoſition of all, *and conſequently*, of ſuch Statutes or Acts of Parliament, as concern either the Extent of the Juriſdiction of thoſe Courts, or the Matters there depending; and therefore if thoſe Courts either refuſe or diſallow theſe Acts of Parliament, or expound them in any other Senſe, than is truly and properly the Expoſition of them, the King's *Great Courts of Law*, who, next under the King and his Parliament, have the Expoſition thereof, may prohibit, and controul them. *Ha. Hiſt. Law* 42.

5. The Court was clear of Opinion, That whereas the Statute 21 *H.* 8. appoints the Adminiſtration to be granted, *&c.* and that the Ordinary takes Sureties for the Adminiſtration of the Goods of the Deceaſed, that he may not impoſe any further or other Condition upon the Bond; and though he pretend that the true Adminiſtration mentioned in the Statute, is to be extended as well to the Diſpoſition of the Surplus, as to Debts and Legacies; yet that is not a Matter under their Judgment; for they are to take the Bond according to the Law; and when the Bond comes to be ſued, the Meaning and Expoſition of the Statute and of the Condition of the very Obligation it ſelf, are both to be judged by the Courts of Law. See *Hob. fo.* 38. Vide *Thorpe's Reading* in *Gray's Inn*, 1641. *ſur le Statute* 31 *E.* 3.

6. If

6. If an Adminiſtration be granted to the next of Blood, and thereupon an Appeal is ſued to the Delegates, and there they intend to revoke the ſaid Sentence, and to grant it to another, who is not ſo near of Blood by our Law, but is by the Eccleſiaſtical Law, a Prohibition lies in ſuch Caſe; becauſe it, being ordained by Statute, ought to be interpreted according to our Law. *Mich.* 21 *Jac. B. R. Wingate* and *Fikh.* And alſo where Adminiſtration being granted to a Brother of the Half-Blood, on Appeal to the Delegates they were inclined to repeal it, and to grant it to the Brother of the whole Blood; therefore a Prohibition went to try their Law upon it by ours. *Ro. Abridg. Prohibition, fo.* 303. *Caſe* 27.

7. If an Adminiſtration be granted to a Couſin of the Half-Blood, and thereupon a Suit is inſtituted by another who pretends himſelf to be a Couſin of the intire Blood, whereas his Father was a Baſtard by our Law, and there is an Appeal unto the Audience; and there they are about to repeal the firſt Adminiſtration, and to grant it to the Son of the Baſtard according to the Eccleſiaſtical Law, a Prohibition lieth; becauſe that the Statute is to be interpreted according to our Law. *Hill.* 22 *Jac. B. R.* Prohibition granted. *Ro. Abr. Prohibition, fo.* 303. *Caſe* 28.

8. The Conſtruction of the Statute 1 *Eliz.* and of the Letters Patent of the High Commiſſion, in Eccleſiaſtical Matters, founded upon that Act, belongs to the Judges of the Common Law; for though the Cauſes, the Cognizance of which, belongs to them,

are meerly Spiritual, as well as the Law by which they proceed; yet their Authority and Power, is given them by Act of Parliament and Letters Patent, the Conſtruction whereof belongs to the Temporal Judges. 12 *Co.* 41, 42.

9. Whether the Eccleſiaſtical Court hath Juriſdiction given by Act of Parliament or not, depends upon the Conſtruction of ſuch Act, and that my Lord Chief Juſt. ſaid belonged to this Court if any Doubt aroſe. Pariſh of St. *John's Clerkenwell, Paſ.* 9 *Geo.* 2. *Banco Regis.* See 12 *Co.* 42.

4. *As to the Conſtruction of their Canons and Conſtitutions.*

1. *Who to conſtrue.*

1. *The King, his Parliament, and Judges.*

1. THE King and his Council in Parliament, as appears by the Statute *De Bigamis, c.* 5. declared how a Canon made in the Council of *Lions* ſhould be interpreted and expounded, *Quod Conſtitutio iſta intelligenda ſit, &c.* in ſuch a Manner as quite differeth both from the Words and Meaning of the Makers of that Canon. *Dav.* 72. *a. b.*

2. When any of the Canons were received, accepted and uſed in any Chriſtian Realm or Commonwealth, they by ſuch Acceptation, and Uſage, have obtained the Force of Laws, in ſuch particular Realm or State, and are become Part of the Laws of that

that Nation; and ſo thoſe which were em-braced, allowed, and uſed in *England* were thereby made Part of the Eccleſiaſtical Laws of *England*; by which the Interpreta-tion belong'd only to the King of *England*, and his Magiſtrates within his Dominions, and he, and his ſaid Magiſtrates have the ſole Juriſdiction in ſuch Caſes, and the Bi-ſhop of *Rome* hath nothing to do in the In-terpretion, Diſpenſation, or Execution of ſuch Laws in *England*, though they were firſt deviſed in that Court, no more than the Chief Magiſtrates of *Athens* or *Lacedemon* might claim Juriſdiction in *Old Rome*; be-cauſe the Law of the twelve Tables were brought from thoſe Cities of *Greece*, or no more than the Maſter of *New College*, *Oxon*, ſhall have Command or Juriſdiction in *King's College* of *Cambridge*; for that the private Statutes by which *King's College* is governed, were for the moſt part borrowed and taken from the Book of the Foundation of *New College*. By this Rule of Reaſon-ing, the Emperor might claim Juriſdiction in Maritime Cauſes within the Dominions of our King; becauſe we have long received, and admitted the Imperial Law for the De-termination of ſuch Cauſes. See *Cawdry's* Caſe, 5 *Co.* and *Kello*. 184. *Da.* 71. *a.*

2. *Whether the ſame, or any, and which of them have been queſtioned.*

1. THE Canons of 1640, have been que-ſtioned, but thoſe of 1603 have ne-ver been doubted. Biſhop *Watſon's* Caſe in *Salkeld.*

B. *Where the Ecclesiastical Courts are irregular in their Proceedings, or act oppressively, or injuriously, or either Want or exceed their Jurisdiction, &c.*

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1. *General.*
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413. 7. *The Heinousness of the Offence and the Punishments annexed thereunto.*

B. *Where the Ecclesiastical Courts are irregular in their Proceedings, or act oppressively or injuriously, or either Want, or exceed their Jurisdiction.*

I. *These Courts subordinate and subject to the Controul of the Superior Temporal Courts.*

1. *General.*

1. LEY Spiritual, that is, the Ecclesiastical Laws allowed by the Laws of this Realm, that is, such as are not against the Common Law, nor against the Statutes, and Customs of the Realm, and thus the Jurisdiction

diction of the Eccleſiaſtical Laws and Courts are bounded; and it is according to theſe Laws, thus limited and reſtrained, that the Ordinary, and other Eccleſiaſtical Judges do proceed in Cauſes referred to their Cognizance. *Co. Lit.* 344. *a.*

2. Of ſuch Cauſes, and in ſuch Manner as the Kings of the Realm, and by general Conſent and Allowance have been aſſigned to the Eccleſiaſtical Courts, they have Juriſdiction, by Force of ſuch Allowance, *&c.* 5 *Co. De Jure Regis Eccleſiaſtico* 6. *b.*

3. Lord Keeper declared, that the Judgments of the Eccleſiaſtical Courts were as ſubject to the Equity of Chancery, as Judgments at Law. 1 *Chan. Caſ.* 201. *Nelſ.* 434. *Gilb.* 208.

4. The King's Laws of this Realm do bound the Juriſdiction of Eccleſiaſtical Courts. 4 *Inſt.* 321. *Vide poſt where they exceed their Juriſdiction.*

2. *Where they take undue Means to enforce their Sentences.*

1. *General.*

1. If a Suit be in the Spiritual Court, and they take an Obligation of the Defendant, to perform their Sentence; a Prohibition lieth; for they have other Ways to compel Performance, where they have Juriſdiction. *Mich.* 12 *Jac. B. R. Codd's* Caſe, *Ro. Abr. fo.* 302. *Caſe* 18. See *Ro. Rep.* 14 *Jac.*

2. *How their Sentences are affected by the King's Pardon.*

1. If a Suit be in the Eccleſiaſtical Court *ad Inſtantiam Partis*, if the Defendant plead the King's Pardon, and after Coſts are taxed to the Plaintiff; for that the Pleading the Pardon, is as it were, a Confeſſion of the Fact, they uſe to tax Coſts there; yet a Prohibition ſhall be granted; for that both the Matter, and the Suit being pardoned, the Coſts are gone alſo. *Hill.* 11 *Jac. B.R. Watſon's* Caſe, *Ro. Abr.* 299. *Prohibition*, (P). Caſe 8.

2. In all Caſes depending between Parties in Court Chriſtian, where the Suit is only *pro ſalute Animæ vel Reformatione Morum*, as for Defamation, *as was the Principal Caſe*, or laying violent Hands upon a Clerk, or the like, the King's Pardon is a Bar to the Suit, for the Suit is not for the Recovery of Damages, or any other Thing; but only to inflict Puniſhment upon the Offender, *pro ſalute Animæ*, *Hob.* 82. which Puniſhment the King might pardon as well before as after the Suit commenced; for in Truth, ſuch Suits are only for the King, though proſecuted by the Party, as were Suits in the Star-Chamber. But if a Libel be for Tithes, or Contract of Matrimony, or a Legacy, or the like, where the Plaintiff hath an Intereſt and Property in the Thing in Demand, and Sentence is given for him, as to the Thing in Demand, the King

King may not pardon it neither before nor after the Suit commenced. 5 *Co.* 51. *a.*

3. All Suits in the Eccleſiaſtical Courts, *ex Officio*, are for the King, wherefore whatever the Suit is the King may pardon it; for they are only to correct or puniſh the Party, for the Offence, or Fault, and not for the particular Intereſt of the Party. 5 *Co.* 51. *b.* *Cro. Car.* 199.

4. It was reſolved, That in the Principal Caſe, though the Suit be for the King, and ſuch as the King might Pardon, yet when Sentence is given, and Coſts are taxed, for the Plaintiff, ſo that the Plaintiff hath a particular Intereſt in them by the Sentence, the King may not pardon ſuch Coſts. But if the Pardon had been obtained before Sentence, there the Pardon had diſcharged all; for then the Court might not have proceeded to any Sentence of the Principal Matter, and by Conſequence not of Coſts which are but acceſſary. 5 *Co.* 51. *b.* *Cro. Car.* 46, 47, 67, 68.

5. A Woman libelled againſt one for calling her Whore, and had Sentence and Coſts of Suit taxed, from which Sentence the Defendant appealed, and pending this Matter, obtained the King's Pardon; and it was reſolved, that though the Defendant had appealed, by which the Sentence to many Purpoſes, by the Opinion of Doctors of the Law Spiritual, is ſuſpended, as appears 27 *H.* 6. Tit. *Gard* 118. 2 *R.* 2. Tit. *Quare Impedit* 143. 1 *H.* 7. 12 2 *Mar.* 105. Yet by the firſt Sentence the Party, notwithſtanding the Appeal, had an Intereſt in the Coſts, which could not be diſcharged by

the King's Pardon; and therefore to this purpoſe, the firſt Sentence is not ſuſpended by the Appeal, and Conſultation was granted afterwards for Coſts. 5 *Co.* 52. *b.*

6. Coſts being awarded to the Party before the Pardon, though they are taxed afterwards, are not taken away by the Pardon. *Cro. Car.* 9.

7. CUDDINGTON brought Caſe againſt WILLIAMS, and declared for calling him Thief, the Defendant juſtified, and ſaid that ſuch a Day the Plaintiff did ſteal ſix Sheep of *J. S.* The Plaintiff by Proteſtation ſaid he ſtole not the Sheep and pleads a general Pardon, and avers he is none of the Perſons excepted: Whereupon the Defendant demurred in Law, and Judgment was for the Plaintiff, the whole Court being of Opinion, That though he was once a Thief; yet when the Pardon came, it took away not only the *Pœnam* but *Reatum*, for Felony is *contra Coronam & Dignitatem Regis:* Now when the King hath diſcharged it, and pardoned him of it, he hath cleared him, not only of the Crime but alſo of the Infamy, wherein no private Perſon is intereſted, but the Commonwealth, whereof the King is Head, and in whom all general Wrongs reſide, and to whom the Reformation of all general Wrongs belong; and therefore Suits for Defamation by private Perſons in Spiritual Courts, are pardonable by the King, and that even after Sentence; for that tho' they be ſued ſometimes by the Party grieved, yet he is only in the Nature of an Informer, and the Sentence is not to give him Amends, but *pro ſalute Animæ.* As of

Suit

Suit in the Star-Chamber. *Hob.* 81, 82. *Vide Cro. Jac.* 335. *Wats*'s Caſe.

8. *Aſſiſe*, being brought by Sir *John Bennet* for the Office of Chancellorſhip of the Archbiſhop of *York*, the Defendant endeavoured to obtain an Injunction out of the Star-Chamber, to ſtay his Suit; he being by Sentence and Decree there, for *Bribery and other Miſdemeanors in his Office of Judge of the Prerogative Court*, fined 20,000 *l.* and ſentenced to be impriſoned, and made incapable of any Office of Judicature; by Reaſon whereof, being diſabled to hold that Office in Queſtion, the Defendant obtained it; and pretending this Aſſiſe was brought by Sir *John Bennet*, that he might enjoy the ſaid Office, contrary to the Decree; he therefore prayed to ſtay his Proceedings; whereupon Sir *John* having Day given him to ſhew Cauſe, why an Injunction ſhould not go, ſhewed them a Pardon from the late King, after the ſaid Sentence, wherein was recited *all the Bribery, and Offences*, contained in the ſaid Decree, and all Penalties and Puniſhments by Reaſon thereof, and all Diſabilities and Incapacities, and all Things concerning the ſaid Sentence, except the ſaid Fine of 20,000 *l.* and thereupon the ſaid Court of Star-Chamber requeſted Sir *John Walter* Ch. Baron, and Sir *Francis Harvey*, third Juſtice of the Common Pleas, to call to them all the Juſtices and Barons, and to conſider of the ſaid Decree and Pardon, and to certify their Opinions, whether it were fit to permit the Proceedings in the Aſſiſe or not; and all the Juſtices and Barons being aſſembled at *Serjeants Inn*, the Sentence

Sentence and Pardon were read before them, and the Caſe argued by Counſel on both Sides; and it was reſolved by the Juſtices and Barons, That this Pardon had taken away all Force of the Sentence in the Star-Chamber, except the Fine of 20,000 l. and all Inabilities are diſcharged thereby; and that the Sentence never took from him the Office, but the Execution thereof, not gave Authority to place others; but if the Archbiſhop, before the Pardon and after the Sentence, had appointed him to execute his Office, and he durſt not do it, then, peradventure, the ſaid Archbiſhop for his Non-attendance, might have ſeiſed the ſaid Office and granted it to another; but the Sentence by it ſelf cannot take away the Office which is a Freehold, and the Pardon having taken away all the Offences, they therefore conceived it convenient to permit him to proceed with his Aſſiſe, and if doubtful it may be found ſpecially, and ſo receive a judicial Hearing. *Cro. Car.* 55, 56.

9. The King's Pardon is a Bar to all Suits in Court Chriſtian, where the Suit is only *pro ſalute Animæ, vel Reformatione morum*; for theſe Suits are not to recover Damages, but only to inflict a Puniſhment upon the Offender, *pro ſalute Animæ.* 5 Co. 2 Part 51. a. Vide Hob. 81. 2 Cro. 355. 1 Cro. 47, 68, 9.

10. In Suits in the Spiritual Court *pro ſalute Animæ tantum*, the King may pardon as well before as after the Suit commenced; for in Truth theſe Suits are only for the King, though proſecuted by the Party. *5 Co. 2 Part 51. a.*

11. Suits

11. Suits in the Spiritual Court, *pro ſalute Animæ*, are only for the King, though proſecuted by the Party. *5 Co. 2 Part 51. a. Vide 1 Cro. 9, 47, 68, 199. 2 Cro. 335. Hob. 81.*

12. Where the Plaintiff ſued him before the Commiſſary of the Biſhop of *Norwich*, for Defamation, wherein he had Sentence, and ſix Pounds aſſeſſed for Coſts, the Defendant appealed from the Sentence to the Court of Arches; and by general Pardon the Offence of the defamatory Words were pardoned, which was pleaded in the Court of Arches, and notwithſtanding that, they proceeded in the Appeal where the firſt Sentence was reverſed, and in that Suit ſixteen Pounds aſſeſſed for Coſts to the Appellant, where by Law they ought not to have proceeded, nor given any Coſts on Prohibition; for though the Pardon hath diſcharged the Offence of Defamation *quoad* Puniſhment to be inflicted by Way of Penalty; yet the Coſts were not diſcharged by the Pardon, but the Court may well proceed in the Appeal; and if they reverſe the firſt Sentence, ſo as the Coſts appear unduly taxed, they may well aſſeſs Coſts.

13. Reſolved, though the Pardon diſcharge the Offence *quoad* any Puniſhment to be inflicted by Way of Puniſhment, or otherwiſe; yet in Reſpect of the Coſts, which are not diſcharged by the Pardon, being aſſeſſed before the Day to which the Pardon relates (as in *Hale*'s Caſe, *5 Co. 51.*) if they be not duly aſſeſſed the Court may well proceed in the Appeal to diſcharge the Parties of them; and if they reverſe the firſt

firſt Sentence, ſo as it appears the Coſts were not duly taxed, and the Party unjuſtly vexed, they may well in the Appeal aſſeſs Coſts; for the Pardon did not extend to ſtop the Suit commenced in the Appeal; nor, by Reaſon of the Pardon, had they Cauſe to ſurceaſe that Suit; and though the Coſts in the Appeal be aſſeſſed after the Pardon; yet are they well aſſeſſed; the Cauſe of the Coſts not being taken away by the Pardon; whereupon Conſultation was granted; but *Hutton* doubted hereof; for the Pardon diſcharging the Offence (which is the Principal) he conceived they ought not to have proceeded for the Coſts. *Cro. Car.* 46, 47. *Veu le Caſe.*

14. If *A.* ſue *B.* in Court Chriſtian for ſaying he was a Pander, and after Sentence is given againſt the Defendant, and that he ſhall be condemned *in Expenſis Litis*, but before the Coſts are taxed in certain, comes the general Pardon 21 *Jac.* whereby the ſaid Offence is pardoned, by this Pardon the Coſts are alſo pardoned; becauſe though there was an Award of Coſts, yet till they are put in certain the Party has no Intereſt in them; therefore if they proceed thereafter for the ſaid Coſts, a Prohibition lieth. *Mich.* 2 *Car. Lewes* and *Whitley*, *per Curiam. Rol. Abr. Prohibition*, (S.) *Caſe* 1. And in the ſame Caſe, if before the Pardon, and after the ſaid Sentence, the Defendant appeal, and then comes the general Pardon, and then the Defendant deſerts his Appeal, whereupon new Coſts are taxed, for this Deſertion, a Prohibition lieth; for that he hath no other Way to have Benefit of the Pardon,

Pardon, but this; for the firſt Court ought to have allowed the Pardon. *Mich.* 2 *Ca. Lewes* and *Whitley*. *Ro. Abr. Prohibition*, S. *Caſe* 2.

15. If a Parſon of a Church be convicted of Manſlaughter, and hath his Clergy allowed, according to the Statute 18 *Eliz.* and is delivered out of Priſon; if he be after ſued in the Eccleſiaſtical Court to be deprived of his Benefice for this Offence, a Prohibition lies; for by the Allowance of his Clergy by the Statute, he is purged and acquitted of the Felony, and of all Penalties and Damages incident to it in Nature of a Pardon. *Mich.* 27 *Eliz. Rot.* 2574. *Nichol's* Caſe *accordant*, *Ro. Abr.* S. *Caſe* 3. *Vide Hob.* 288, *&c. Searle* and *Williams's* Caſe, and 2 *Inſt. fo.* 637.

16. All the Proceedings in the Eccleſiaſtical Court, which are *ex Officio*, for the King, let them concern any Matter whatſoever, yet the King may pardon; for they are only to correct. 5 *Co.* 51.

17. Where the King may pardon; yet if Coſts are taxed for the Plaintiff, there the Plaintiff hath a particular Intereſt, by the Sentence; which the King cannot pardon tho' a Day be given for Payment; and it was the ſame in a like Caſe in the Star-Chamber. 5 *Co.* 5.

3. *Where theſe Courts act oppreſſively.*

1. The Papal Authority did never fine or impriſon in any Caſe, but ever proceeded only

only by Eccleſiaſtical Cenſures. 4 *Inſt.* 324, 329.

2. If one be impriſoned by Eccleſiaſtical Authority, on Complaint thereof made to the Temporal Courts, that he is impriſoned without juſt Cauſe, the Temporal Courts will ſend to have the Body, and demand to be certified of the Cauſe, which if the Eccleſiaſtical Judge refuſe, the Temporal Courts, of their own Authority, will deliver him; for where the Temporal Judges ſee not a juſt Cauſe of the Party's Impriſonment by the Eccleſiaſtical Courts, the Temporal Judges are (as being bound by Oath) to deliver him. 2 *Inſt.* 615, 616.

3. A Citizen of *Briſtol* had a Country-houſe, and frequently received the Sacrament of the Lord's Supper, in his Pariſh-Church in the Country, and likewiſe he received it frequently in the Cathedral Church of *Briſtol*, for which Cauſe he was cited into the Eccleſiaſtical Court and admoniſhed; and afterwards for not obeying and receiving in his Pariſh-Church, according to the Monition, he was excommunicated, though one of the Surrogates of the Court, but the *Sunday* before, had, with his own Hand given him the Sacrament, and though he there pleaded this, and likewiſe his Receiving in the Country at his own Pariſh-Church there, they would not allow it; upon this Matter appearing to the Court of *King's Bench*, a Prohibition was awarded. *Skin.* 101, 176. *Vide antea*, Court of Audience, *Not to oppreſs the Subject.*

4. *In Scac. Mich.* 3 *Geo.* 2. *Price* and *Prat & al'.* The Lord Ch. Baron ſaid in this Caſe, That every Curate muſt take a Licence, unleſs Fellows of Colleges, *&c.* and *Carter*, Baron, ſaid, That no Curate is obliged to take a new Licence, upon a bare Tranſlation of a Biſhop, and that tho' this he ſaid was frequently done; yet it had been complained of in Parliament.

4. *Where they cannot adminiſter Right.*

1. It is a good Cauſe for a Prohibition to the Eccleſiaſtical Court, that their Law, in the particular Caſe, cannot adminiſter Right to the Party. *Mo.* 425.

2. Where the Wife had ſued the Huſband in the Eccleſiaſtical Court, for Alimony, and it was ſuſpected that he would go beyond Sea to avoid the Sentence, the Court granted a *Ne exeat Regnum.* 2 Ventr. 345.

5. *Where they want Juriſdiction.*

1. *A Prohibition lieth*, not only where a Man is ſued in the Spiritual Court, for Matters remedial in the King's Courts, but alſo where the Spiritual Courts hold Plea in Caſes, where they, by the King's Prerogative, and by the ancient Cuſtoms of the Realm, ought to hold none. *Doct. & Stud. lib.* 2. *c.* 24.

2. If any Matter appears in the Declaration, which ſhews that the Cauſe of Action did not ariſe *infra Juriſdictionem*, there a Pro-

Prohibition may be granted at any Time 2 *Mod.* 273.

3. If the ſubject Matter in the Declaration be not proper for the Judgment, and Determination of ſuch Court, there alſo Prohibition may be granted, at any Time 2 *Mod.* 273.

4. Felony or other Capital Crimes are not cognizable, or examinable in the Eccleſiaſtical Courts, no not for Purpoſes examinable there. *Hob.* 121.

5. A Prohibition went for that the Commiſſary, at his Viſitation, had cited ſeveral Men of ſeveral Pariſhes, to appear before him there; and for not appearing, they were excommunicated, the Prohibition was granted, for that the Ordinary hath no Power, to cite any to his Courts, but the Church-wardens and Sideſmen. *Noy* 125 Tithes. *Mo.* 907, 908, *&c.* *Vide Prohibition*, where it lies, *etiam Præmunire.*

ſee p. 350.

6. *Where they exceed their Juriſdiction.*

1. *General.*

1. The Laws and Statutes of the Realm have preſcribed theſe Courts their Bounds and Limits; and therefore the Courts of Common Law have the Superintendency over theſe Courts, to keep them within the Bounds of their Juriſdiction, and they are to judge when theſe Courts exceed their Limits; and if they do, then the Courts of Law are to iſſue their Prohibitions, to reſtrain them, and ſuch Prohibition is directed

either

either to the Judge or Party, or both; and alſo in Caſe they exceed their Juriſdiction, both the Officer who executes the ſame, and the Judge who pronounceth the Sentence are puniſhable in the Courts *at Common Law*; at the Suit of the King, or at the Suit of the Party, and ſometimes at the Suit of both, according to the Variety and Circumſtances of the Caſe. *Ha. Hiſt. Law* 41, 42. *Doct. & Stud. lib.* 2. *c.* 28, 29.

2. If the Eccleſiaſtical Courts preſume to exceed their Juriſdiction, by extending to other Matters, than is allowed them by the ſuperintending Temporal Laws and Courts, or even if they will proceed according to the Rules, and Methods of their own Laws and Courts, when thoſe Laws and their Methods of Proceeding, is controuled by the Common Law, the Common Law will not only prohibit, but alſo puniſh them for ſo doing; for their Laws owe all their Efficacy here to their Reception, and not to any former foreign Uſage. See *Ha. Hiſt. Law*, *fo.* 27, 28, 29, 41, 42.

3. *Per Coke*, the Temporal Law and the Eccleſiaſtical Law, are ſo coupled together that they cannot ſubſiſt one without the other; for as to the Legitimation of Iſſue who is Heir to the Land, if Baſtardy be pleaded, this ſaith his Lordſhip is a Matter meerly Spiritual; ſo *N'unques accouple en loyal Matrimonie*, which the Common Law may not try; wherefore the Law Eccleſiaſtical is extreamly neceſſary; yet it is to be reſtrained and kept within its due Bounds, and if it exceeds its Power, it is to be reduced by the King's Prohibition, to its true Courſe;

The Reaſon wherefore the Temporal Courts may not try theſe Matters, is becauſe they have been allowed to the Spiritual Courts, but antiently all ſuch Matters were examinable only in the Temporal Courts.

Courſe; but where it does not exceed its proper Juriſdiction its Sentences are binding in and to the Temporal Law. *Mo. fo.* 782, 783.

4. One may ſue a Prohibition to the Sheriff, That he ſuffer not the King's Lay Subjects, to come to any Place, on the Biſhops Citation, *ad faciendas aliquas Recognitiones vel Sacramen. præſtand. niſi in Cauſis Matrimonialibus & Teſtamentariis*, and alſo the Party might ſue an Attachment *ſur ceo* againſt the Biſhop, or other inferior *Ordinary or Official*, if he cited, or diſtrained, any to appear before him at his Pleaſure againſt their own Will; from whence it is clear that theſe general Citations for Men to appear, *pro ſalute Animæ*, without expreſs Cauſe, are againſt Law, and the Party might ſue a Prohibition for it, and an Attachment upon that, as the Cauſes are not of Eccleſiaſtical Cognizance. *Fitzh.* 41. A.

See p. 362. & 374.

5. Court Chriſtian only to correct or puniſh the Party for the Offence or Fault, and not to Sentence for the particular Intereſt of the Party. See 5 *Co.* 51. *b.* *Cro. Ca.* 199. 2 *Cro.* 335.

6. An Eccleſiaſtical Judge prohibited may not proceed without Danger of an Attachment. 2 *Inſt.* 610.

7. No Man could, *or can*, be impriſoned by Force of any Juriſdiction Eccleſiaſtical. 4 *Inſt.* 326, 327, 329. Save in particular Caſes where it is given by Act of Parliament. 4 *Inſt.* 329.

8. If the Parſon of a Church ſue for Tithes in the Spiritual Court againſt *B.* who gets a Prohibition *ſur* 2 *E.* 6. upon a *Sur miſ*

miſe of barren Land; whereupon the Iſſue is joined, and a Verdict for the Parſon, and a Conſultation granted, and then a Sentence is given in the Spiritual Court, and Coſts taxed, thereupon a Bill preferred, the Particulars whereof amount *circa* 10 *l.* and there is preferred alſo to have Coſts *pro Expenſis Juris peritorum & ſolicitatorum* 48 *l.* and thereupon Coſts aſſeſſed; for all 45 *l.* in this Caſe, becauſe *A.* the Plaintiff refuſed to take his Oath, that nothing of thoſe Coſts was for any Expences at Common Law, though it was ſo certified by the Chancellor; yet upon this Surmiſe a Prohibition lieth. *Mich.* 9 *Car. Banco Regis, Flower Vawer*; but no Prohibition was granted; for that, by Conſent, the Coſts were mitigated, *per Cur'*, to 30 *l.* *Roll. Abr. Prohibition* (R) *Caſe* 10.

9. If a Layman is to forfeit a Penalty on Stat. or otherwiſe, he is not there bound to anſwer upon Oath in the Eccleſiaſtical Court, whether he committed the Offence or not, which cauſes the Forfeiture; ſo rby that Means he ſhould be bound to diſcover ſufficient Matter for an Information. *Mich.* 12 *Jac. Bradſtone*'s Caſe, *Ro. Abr. Prohibition* (T) *Caſe* 1. See alſo *Caſe* 2 & 3. But a Clergyman may be examined upon Oath, for Preaching againſt the Book of Common Prayer, for ſuch are not within the Statute. *Trin.* 7 *Jac. Parſon Mansfield*'s Caſe, adjudged *per Curiam.* Ro. Abr. Prohibition (T) Caſe 4.

10. In a Suit in the Eccleſiaſtical Court, if they give Sentence for the Plaintiff, and give treble Damages, where, by the Statute,

they ought to give but double Damages, a Prohibition ſhall be granted; but it ſhall not be general to the Cauſe, but that they do not proceed to the Execution of the Sentence *quoad* the treble Value, without more; and if they may, by their Law, ſever it, they may proceed to Execution for the double Value. *Hill.* 11 *Jac. Baldwin* and *Geery. Ro. Abr. Prohibition*, *fo.* 316. *Caſe* 4.

11. If one Man ſue another *in Banco Regis*, in Treſpaſs for Battery or Taking his Goods, and is nonſuit, and diſcontinueth the Suit; whereupon the Defendant ſueth him in the Spiritual Court, for Defamation, *&c.* he ſhall have a Prohibition, and Attachment thereupon againſt him; and alſo ſhall have ſuch Prohibition to the Judge, and an Attachment againſt him, if he hold Plea therein after the Prohibition delivered to him. *Fitzh. Nat. Brev.* 41. K.

12. A Conſultation was refuſed, where Defamation was not only and meerly Spiritual, or Party ſued, for Amends. 4 *Co.* 20

13. If a Man be ſued in the Eccleſiaſtical Court for Tithes, and recover, and Coſts are taxed, and then the Defendant procures a Prohibition, after which a Conſultation is granted, and the Eccleſiaſtical Court taxes new Coſts againſt the Defendant, for the Plaintiff's Coſts in the Temporal Court in the Prohibition; a Prohibition ſhall be granted for the Taxing theſe new Coſts; elſe every Body would be deterred from ſeeking Prohibitions, and the Plaintiff, in the Prohibition at Law, ſhall not have any Coſts though he recover. 17 *Jac. Banco Re*

gis, *Stonehouſe* and *Read*, Ro. *Abr. Prohibition* (R) *Caſe* 4.

14. Upon the three Rules in Caſes of Defamation, *vide le Stat. De Articuli Cleri*, *cap.* 1, 2, 3. and the Stat. *De Circumſpecte Agatis*, *Anno* 13 *E.* 1. and *Fitzh. Nat. Br.* 51. J. K. 52. D. M. 53. A. F. As if a Parſon ſue for laying violent Hands upon him, and to have the Party excommunicated, or corporally puniſhed; but he may not ſue there for Damages or Amends; but the Plaintiff may recover Coſts there; but if the Defendant, in ſuch Caſe of Defamation, be ſentenced to corporal Puniſhment, he may redeem his Penance, by Agreement

to

For it cannot be doubted but puniſhing a Man in his Purſe will work all the good Ends of Penance, elſe the Church would not uſe it, inſtead of the other. Who can Queſtion but a commuting Sinner muſt needs be ſorry for his Sin, or that he had ſuch Cauſe of Redeeming his Penance, and he will certainly refrain from that Sin for the Future, for the ſame good Reaſon; ſo that Commutation neceſſarily works a Contrition for paſt Sin, and Reformation for the Future; and whatever ſome would inſinuate, though there might be ſome little Error in Judgment, for which Men are not, even in ſtrict Law, accountable; yet it is not to be ſuppoſed, from the Caſe of the Gentleman who was excommunicated for not receiving the Sacrament in his Pariſh-Church in *Briſtol*, tho' it ſhould be admitted he frequently received in his Pariſh-Church where his Country-houſe was, and where he often was on *Sundays* and other Holy-days, and in the Cathedral Church of *Briſtol*, being the Biſhop's Church, and that at the Hands of an Officer of that Eccleſiaſtical Court, who ought perhaps to have informed the Court of this Gentleman's frequent Communicating; yet it is not to be imagined from hence, I ſay, neither from the Caſe of Dr. *James*, Judge of the Audience, who cited Men out of his Juriſdiction in the firſt Inſtance, as that Caſe unfortunately was, ſixty Miles from their Home, tho' at very great Trouble and Expence, and to the Let and Hindrance of their Temporal Affairs, that the Courts Chriſtian, in theſe, or all or any other, the Caſes which might be collected from the Books, had any View to Redemption; but meerly and ſimply to the Salvation of Souls, and the Reformation of Manners; for it is certain the Men of Holy Church neither ought, nor as I would hope do, ſeek any other End.

p. 350.

p. 330.

And

And as to Monition it muſt not be forgot, that whilſt the Excommunicate is paying his Money, the Marrow of his Purſe, for the Sin of his Body, he either is expreſly admoniſhed; or at leaſt ſuch pecuniary Satisfaction making, is a tacit Admonition of it ſelf, ſufficient and adequate to Penance.

to pay a certain Sum of Money, &c. 4 Co. 20. *b.*

15. The Commiſſary, at his Viſitation, had cited ſeveral Men of ſeveral Pariſhes, to appear before him, and for not appearing they were excommunicated; whereupon a Prohibition went, the Ordinary having no Power to cite any to that Court but the Church-wardens and Sides-men. *Noy* 123.

See p. 352.

16. *Paſ.* 5 *Geo.* 2. *B. R. Hall* and *Godley.* On Rule to ſhew Cauſe why a Prohibition ſhould not be granted to the Eccleſiaſtical Court, Mr. *Fazakerley* argued, that the Suggeſtion ſets forth, that the Plaintiff before has libelled upon a Rate by which the Inhabitants of the Pariſh of Saint *Clement* in *Haſtings*, who lived there in the Year 1729, are required to pay a certain Pound-rate, towards the Building of a Church which was finiſhed in the Year 1716. The Suggeſtion further ſets forth, that a Suit was inſtituted in the Court of Exchequer, by the Workmen, againſt ſome of the Inhabitants, wherein there was a Decree againſt ſuch Inhabitants, and the Rate further ordered, that the reſt of the Inhabitants ſhould be contributary towards the Expence of that Suit, and upon that Part of the Rule, the Libel was alſo founded; upon each of theſe Parts of the Libel he ſubmitted it, that the Eccleſiaſtical Court had a Juriſdiction; but the Court were of Opinion that they had not,

not, and accordingly the Rule was made abſolute.

17. A Surrogate having granted Adminiſtration has done his Office, and hath no further Authority to take any further or other Security, &c. *Havers* and *Havers*, *in Canc.* 1 *May* 1740. *Vide poſt Prohibition* and *Præmunire.*

2. *How reſtrained.*

1. *General.*

1. The ordinary Methods of reſtraining the Eccleſiaſtical Courts, from exceeding their Juriſdiction, is

1. *By* Prohibition.
2. *By* Præmunire. } *Ha. Anal.* 32.

1. *Of the Prohibition.*

1. *What it is, and its Operation.*

1. Prohibition, *Prohibitio*, is a Writ to forbid any Court, either Secular, or Spiritual, to proceed in any Cauſe pending before them on Suggeſtion, that ſuch Cauſe belongs not to their Juriſdiction. See *Fitzh. Nat. Br.* 39. G.

2. A Prohibition is a Writ which lieth where one is impleaded in the Spiritual Court, of a Matter neither matrimonial, teſtamentary, nor meerly Tithes. *Terms de la Ley*, ſub Tit. *Prohibition.*

3. A Prohibition is to reſtrain one from ſuing in an inferior Court, for Matters where-

of they have not *Power to hold Plea*, as in Court Chriſtian, and though the Matter be of ſuch Sort as the Party cannot have Relief at Common Law, yet he may have ſuch Prohibition. *Fi. Ley* 28.

2. *General to.*

1. The Reaſons of Prohibitions in general are, that they are to preſerve the Right of the King's Crown, and Courts, and the Eaſe and *Quiet of the Subject*: It is the Wiſdom and Policy of the Laws to ſuppoſe both beſt preſerved when every Thing runs in its right Channel, according to the original Juriſdiction of each Court; that by the ſame Reaſon that one Court might be allowed to incroach, another might, which could produce nothing but Confuſion, and Diſorder in the Adminiſtration of Juſtice. In Writs of Prohibition, the Suggeſtion is, and with Truth, *in præjudicium Coronæ Regis & Gravamen Partis.* Show. Parl. Caſes 63. 12 Co. 61.

2. It is always ſaid in Prohibitions, be the Court Temporal or Eccleſiaſtical to which they are awarded, if they deal in any Cauſe which they have not Power to hold Plea of, that the Cauſe is drawn *ad aliud examen*, than it ought to be, and therefore is *contra Coronam & Dignitatem Regiam.* 2 Inſt. 602. 3 Inſt. 120, 122. 12 Co. 38.

3. A Prohibition often lies where a *Præmunire* does not, as where the Matter of the Action belongeth to the Spiritual Court, but not the Cauſe in the then Form. But where it is of a Lay Thing, which never belonged to

to the Spiritual Court a *Præmunire* lieth, as Debt, or *pro Læſione Fidei*, on Promiſe to pay 10 *l.* by ſuch a Day, *&c. Little Bro.* 11. *a. Caſe* 57. *Bro. Præmunire* 16. *Doct. & Stud. lib.* 2. *cap.* 24.

4. What the Law doth warrant, in Caſe of Prohibitions, to keep every Juriſdiction within its true Bounds and Limits, cannot be altered but by Parliament. *Quia Leges Angliæ ſine Parliamento mutari non poſſunt.* 2 Inſt. 619.

5. Prohibition cannot be altered in Reſpect to Forms, but by Parliament. 2 *Inſt.* 602, 619.

6. Prohibitions and Inhibitions are of ſeveral Sorts, and go as well to Temporal as Spiritual Courts. *Fitzh. Nat. Br.* 39. H.

7. Held *per tot. Cur'*, That the Time of ſix Months, given by the 2 *E.* 6. for the proving a Suggeſtion of a Prohibition, is to be intended ſix Months in Term-time, and the Vacation ſhall not be Part of the Time. *Mo. Rep.* 573.

8. Prohibition for Three, one is nonſuited, or *Retraxit*, it ſhall not bar the Reſt. By *Popham* and *Fenner*. *Mo.* 460. *Caſe* 643.

9. Tho' the King's Bench had not Power to hold Plea of the Thing libelled for; yet it had Power to limit the Juriſdiction, of that, and all other inferior Courts, and if they abuſe their Authority, to grant Prohibitions. *Godb.* 247. *Fi. Ley* 28. *Show. Parl. Caſes* 63.

10. A Prohibition was prayed for citing one to anſwer Articles in the Eccleſiaſtical Court, and did not deliver him a Copy of the Articles, and it was granted *quouſq;* they deliver

deliver him the Copy, but the Prohibition was taken abſolute, whereof the Court being informed, though they did not think fit to grant a Conſultation, yet diſcharged that Prohibition by *Superſedeas*; whereupon they proceeded and excommunicated the Party for not anſwering, who again moved the Court for a Prohibition which was granted with a *Mandamus* in it to abſolve him, if it were for not Anſwering before they gave him a Copy of the Articles. 1 *Vent.* 5.

11. A Man may ſue a Prohibition to the Sheriff, That he ſuffer not the King's Lay Subjects to come to any Place on the Biſhop's Citation *ad faciend. aliquas Recognitiones vel Sacramen. præſtand. niſi in Cauſis Matrimonialibus & Teſtamentariis.* Fitzh. 4. A.

See p. 354.

41.

12. *Wilmot* prayed a Prohibition until a Copy of Interrogatories were delivered upon a Citation, which *per Cur'*, was reſolved by all the Judges in *Scurre*'s Caſe ought to be; but there being no Libel in theſe Caſes, no Prohibition lieth on the 2 *H.* 5. for not delivering a Copy of the Libel generally. 2. It was ſuggeſted, That the Party was charged criminally to anſwer Miſdemeanors; in which Caſe, *per Curiam*, he muſt Anſwer *Non tenetur reſpondere*, and this muſt be on Oath; and if then the Spiritual Court will proceed, a Prohibition lieth. 2 *Keb.* 352.

13. An Injunction is a Prohibition: So is a *Superſedeas*. 12 Co. 60.

14. The Common Law is a Prohibition in it ſelf, and he who incroaches upon the Juriſdiction of it, incurs a Contempt. 12 *Co.* 54.

3. *When*,

3. *When, and where it lieth.*

1. General

1. The Common and Municipal Laws of *England* have in ſome Meaſure allowed the Canon and Civil Law as the Rules and Direction of Proceedings or Deciſions; yet even here the *Superior* Common Law has retained thoſe *Signa Superioritatis* and the Preference and Superintendence of thoſe Courts, to keep them within the Limits and Bounds of their ſeveral Juriſdictions, and to judge whether they have exceeded thoſe Bounds or not; and if they do exceed, then the Courts of Law iſſue their Prohibitions, *&c.* to reſtrain them, *&c. Ha. Hiſt. Law* 41, 42. *Doct. & Stud. lib.* 2. *cap.* 28, 29.

2. Prohibitions are grantable any Time to reſtrain Courts to intermeddle with, or execute any Thing, which by Law they ought not to hold Plea of, and it is the Folly of thoſe who will proceed in the Eccleſiaſtical Courts for that whereof they have no Juriſdiction, or of that whereof the King's Temporal Courts have Juriſdiction, and ſo themſelves (*the Eccleſiaſtical Courts*) by their extraordinary Dealing, are the Cauſe of ſuch extraordinary Charges, and not the Law; for their Proceedings in ſuch Caſe is *coram non judice*, and the King's Courts, which may award Prohibitions, being informed, either by the Parties themſelves, or by any Stranger, that any Court Temporal or Eccleſiaſtical doth hold Plea of that, whereof they have not Juriſdiction, may lawfully

See p. 370.

lawfully prohibit the ſame, as well after Judgment and Execution, as before. 2 *Inſt.* 602, 607, 609. *Cro. Jac.* 350. 2 *Show.* Rep. 406. *Salk.* 548. 12 *Co.* 59.

3. Prohibition granted; for that theſe Courts hold Plea of what they have not Juriſdiction. 2 *Inſt.* 619.

4. A Prohibition lieth to Court Chriſtian to ſtay a Suit there for a Matter pending in the Common Pleas. 10 *H.* 6. 21.

5. A Prohibition lieth for ſuing on Collation of Scholars to a Grammar-School. *Fitz. Nat. Br.* 40. L.

6. It was holden *Banco Regis*, That tho' that Court had no Power to hold Plea of the Thing libelled for in the Spiritual Court; yet it had Power to limit the Juriſdiction of that and all other inferior Courts, and if they abuſe their Authority, to grant a Prohibition. *Godb.* 247.

7. Where-ever a Court Chriſtian attempts to draw in Queſtion *Laicum Feodum*, a Prohibition lieth. *Cro. Car.* 395, *&c.*

8. The End of a Prohibition is to reſtrain from ſuing in inferior Courts, for what is not within their Juriſdiction, as in Court Chriſtian for Matters not matrimonial, nor teſtamentary; and that though it be for Matter not cognizable at Common Law. *Fi. Ley* 28.

9. A Prohibition often lieth where a *Præmunire* doth not, as of groſs Trees, or *pro Decimis de ſeptima Parte*, a Prohibition lieth, and not a *Præmunire*, for the Matter of the Action lieth in and belongeth to the Spiritual Court, but not the Cauſe in this Form. But where it is of a Lay Thing, which ne-

ver

ver belonged to the Spiritual Court, of ſuch a *Præmunire* lieth, as of Debt againſt Executors upon Simple Contract, or *pro Læſione Fidei*, upon a Promiſe to pay 10 *l.* by ſuch a Day. *Lit. Bro.* 11. *a. Caſe* 57. *Bro. Grand Abr. Præmunire* 16. *Doct. & Stud. lib.* 2. *c.* 24.

10. A Prohibition lieth for Chantries, Chapels, Prebends and Vicarages, *&c. Fitzh. Nat. Brev.* 40. G.

11. A Prohibition lieth for Matters cognizable at Law, though they concern Spiritual Matters. *Fitzh. Nat. Br.* 40. L.

12. If the Pope's Collector hold Plea in *England*, of a Spiritual Matter, a Prohibition lieth; for he hath not Juriſdiction; for it belongeth to the Spiritual Judges of the King. 3 *H.* 4. *Ro. Abr. Prohibition*, B. 1.

13. Lord Ch. Juſt. *Popham* ſaid, That if the Lord of a Manor hath the Probate of Teſtaments within his Manor, if ſuch Will be proved in the Eccleſiaſtical Court a Prohibition lieth; becauſe the Juriſdiction thereof belongeth to another, elſe the Party might be doubly vexed. 5 *Co.* 2 *Part* 73. *b.*

ſee P. 372. 374.

14. If the Vicar ſue the Parſon impropriate for Damages, for felling Trees growing *in Cœmeterio*, a Prohibition lieth; for that if the Trees belonged to him, he might have had Treſpaſs at Law. *Mich.* 13 *Jac. Banco Regis*, *Bellamy's* Caſe. *Ro. Abr. Prohibition*, *fo.* 311. *Caſe* 2.

Impr. on of Eye near Peterborough ?

15. If Leſſee *pur Ans* be ſued in the Spiritual Court for Tithes, he in Reverſion may have a Prohibition. *Mo.* 915. *Cro. Eliz.* 55.

16. If

16. If one acknowledge in Court Chriſtian to pay Money at a Day, and do not pay it, for which he is excommunicated, he may have a Prohibition. *Fitzh. Nat. Brev.* 41. C. or, *if I miſtake not, he might have ſued on the Statute of Proviſors.*

17. If a Man recover a Debt in the Spiritual Court and ſue Execution there, the other may have a Prohibition againſt the Party and Judge, and an *Attachment* upon the ſame. *Fitz. Nat. Brev.* 41. B, C, D.

18. If one ſue out of the Realm for Debt or other Matter cognizable in the King's Courts, a Prohibition and an Attachment lie, *&c. Fitz. Nat. Br.* 44. H. Vide 9 *E.* 4. 5 *Co.* 1. *Part* 26. *b.*

19. If the Defendant, who intended to have pleaded to the Juriſdiction, is prevented by any Artifice, as by giving a ſhort Day, or by the Attorney's refuſing to plead, *&c.* or if his Plea be not accepted or over-ruled, in theſe Caſes, a Prohibition likewiſe will lie at any Time. 2 *Mod.* 273.

20. If the Spiritual Court will proceed to diſſolve Marriages out of the *Levitical* Degree, the Temporal Courts may prohibit them; for by Statute all Marriages, not within thoſe Degrees, are lawful. *Gilb.* 156. Vide Stat. 38 *H.* 8. *c.* 13.

21. Prohibition lies where the viſitatorial Power is invaded. *Gilb.* 181. *Show. Parl. Caſes* 51. 4 *Inſt.* 112. *Stillingfleet's* Caſes 413.

22. A Prohibition lies for a Seat in a Church preſcribed for. *Palm.* 424.

23. For a Clerk *in Banco Regis*, or any of the other Courts of *Weſtminſter*, being appointed Church-warden, *&c.* *Palm.* 392.

24. In Caſes of Tithes it lieth. *Palm.* 37, 38, 39, 525, 526. *Salk.* 551. 2 *Co.* 45.

25. In Caſes of Deviſe of Goods and Lands, *quoad* the Lands. *Palm.* 120.

26. In Caſes of Innovation *en le Eccliſe.* Palm. 297.

27. For Words. *Palm.* 379.

28. For Pariſh Clerks. *Palm.* 579, 379. *And almoſt in infinite other Caſes, as where the Bounds of Pariſhes come in Queſtion, or Matter of Cuſtom or Preſcription, or where they proceed in any Degree againſt Law, or the Rules thereof, or want Juriſdiction, or exceed the limited Juriſdiction indulged to them, or act injurioufly, or iniquitouſly,* &c.

29. Reſolved by *Coke* Lord Ch. Juſtice, *Warburton*, *Daniel* and *Foſter* Juſtices, That the Common Pleas may award a Prohibition, tho' no Suit there pendent; becauſe this Court is the principal Court of Common Law for Common Pleas; for it belongs to the Juriſdiction of this Court to determine all Common Pleas. 12 *Co.* 59.

30. It is enacted by *Magna Charta*, which had, in Lord *Coke*'s Time, been thirty Times confirmed by ſubſequent Acts, that if the Eccleſiaſtical Judges incroach upon the Juriſdiction of the Common Pleas to hold Plea of any Thing againſt the Common Law of the Land, or any Thing triable by the Law, there the Principal Courts of the Common Law ſhall grant a Prohibition, and that without original Writ, and if the Prohibition be contemned, the Chancellor

cellor may award an Attachment, to puniſ ſuch Contempt, &c. 12 Co. 59. tho' th Archbiſhop of *Canterbury*, as Lord Co ſays, in his Articles concerning Prohibition holds, that neither the Common Pleas no the King's Bench could, but his Grace mi took his Law. 12 Co. 60. *ſed humanum e errare, and his Grace was neither firſt n laſt of his own Order, who have often mi taken the Common Law, and not ſeldom the own.*

Introd. p. 45.

2. *Rules in.*

1. It is a Rule not to grant a Prohibition where the Proceedings in the Eccleſiaſtica Courts are not againſt the Law of the Land nor the Liberty of the Subject. *Cro. Ja* 530, 531. *Keil.* 7 *H.* 8. 181.

2. If the Eccleſiaſtical Courts adjudg otherwiſe than the Common Law allows, Prohibition lieth. *Paſ.* 16 *Jac. Griffin* an *Bulſuſt. Ro. Abr. Prohibition* (U) *Caſe* 1

3. Where an Act of Parliament reſtrain a Juriſdiction, the Act warrants a Prohibi tion, in Caſe that Reſtraint be broken, o exceeded; it is ſo in Caſe of a limited Powe at Common Law, but much more ſo upo a Statute. *Show. Parl. Caſes* 64.

4. In the Biſhop of *Winchester*'s Caſe 2 *Co.* 45. it is held, That in a Suit fo Tithes in the Spiritual Court, it may have Prohibition, ſuggeſting a Preſcription o *Modus*, before, or without, Pleading; bu this ſeems not to be Law, for *Anno* 12 *W.* 3 *B. R.* it was ſaid by my Lord Chief Juſtic *Holt*

Holt, That if a *Modus* be pleaded in the Spiritual Court and admitted, no Prohibition ſhall go, but if the Queſtion be, whether a *Modus* or no *Modus*, a Prohibition; and ſo is the Law, (*viz.*) wherever the Matter which you ſuggeſt for a Prohibition is foreign to the Libel, you muſt plead it below, before you can have a Prohibition; otherwiſe where the Cauſe of Prohibition appears on the Face of the Libel. *Salk.* 551. *for ſuch Caſe I take to be clearly within the Law of* Proviſors *or* Præmunire. Vide *infra* Caſe 6.

5. The Court were all of Opinion, That where the Eccleſiaſtical Court proceeds upon Things meerly Spiritual, no Prohibition is to be granted; ſo where they meddle with Temporal Matters, or refuſe to admit ſuch Proof as is allowed at Common Law, no Conſultation ſhall go; if the Law ſhould be otherwiſe, it would be inconvenient for all Executors and Adminiſtrators; for if they ſhould be compelled to prove Payment of Debts by two Witneſſes, they might often fail of that Proof, and ſo pay the Money twice. 3 *Mod.* 286.

6. It was agreed *per Curiam*, If one be ſued in the Spiritual Court for a Matter whereof they have Juriſdiction, and therein a Plea is pleaded, which is triable at Law; if they will allow the Plea they ſhall have Juriſdiction and try it; otherwiſe a Prohibition lieth. *Cro. Eliz.* 595. 2 *Mod.* 273. *Pop.* 59. *Ray.* 123, 189. *Gilb.* 207, 208. 3 *Mod.* 284, 286. 6 *Mod.* 11, 162, 252. *Skin.* 35.

7. Reſolved, when any Libel in Court Chriſtian, contains many Articles, if any of them do not belong to ſuch Court, a Prohibition general is to go, and that in a Vacation too: As in the Principal Caſe the Prohibition was granted by *Fenner* and *Crooke* Juſtices in Vacation-time. 12 *Co.* 44.

8. Where the Spiritual Court may hold Plea of a Temporal Thing they muſt judge after the Temporal Law, and Ignorance ſhall not excuſe them in that Caſe; for by Taking of their Office they have bound themſelves to have Knowledge of as much as belongeth to their Office. *Doct. & Stud. lib.* 2. *cap.* 25. *fo.* 109. *a.*

4. *At whoſe Inſtance awarded.*

1. *General.*

1. The King's Courts may award Prohibitions, being informed by the Parties themſelves, or by any Stranger, that any Court Temporal or Eccleſiaſtical, do hold Plea of that, whereof they have not Juriſdiction; and that as well after Judgment and Execution as before; and ſo was reſolved by all the Judges of *England.* 2 *Inſt.* 619. Vide *le meſme Livre* 607.

See p. 363.

2. Prohibition was by the Plaintiff to ſtay his own Proceedings in the Spiritual Court, for Tithes by Virtue of Leaſe, made by the Vicar for three Years; the Defendant claimed to be diſcharged by a former Leaſe and Compoſition by Deed, and held the Plaintiff himſelf might have a Prohibition

to

to ſtay this Suit; for they are not to meddle with Trial of Leaſes, or real Contracts, though they have Juriſdiction of the original Caſe, *Tithes*; for the Leaſe is in the Realty and not meerly accidental; & *non refert*, though the Plaintiff in the Spiritual Court brings this Prohibition to ſtay his own Suit; for if this Court hath Knowledge, *by any Means*, that the Spiritual Court meddles with Temporal Trials, they ought to grant a Prohibition. *Cro. Jac.* 350, 351. 2 *Inſt.* 602, 607, 619. 2 *Show.* 406. *Mo.* 780, 781. *Vide poſt* under Diviſion *Pariſh-Clerks*, Caſe *Auſtin* and *Jervis*.

3. Though a Man libel in the Spiritual Court for a Matter which belongeth not to their Juriſdiction, but to the Common Law; as for Matter of Freehold; yet he himſelf, againſt his own Suit, may pray a Prohibition and ſhall have it. *Mich.* 15 *Jac. Kiſte* and *Bridgeman*. *Ro. Abr. Prohibition, fo.* 312. *Caſe* 4. *Show. Rep.* 406. See *Jarvis*'s Caſe under *Pariſh-Clerks*.

2. *Whether ſeveral may join therein.*

1. Where the Suit below is upon ſeveral Libels, againſt ſeveral Perſons, though for the ſame Matter, they may not join in Prohibition; for the tortious Vexation of one does not go to the other, no more than two may join in an Action for ſlanderous Words; yet in the principal Caſe, which was a Suit in the Eccleſiaſtical Court for Tithes, wherein was a Suggeſtion of a Cuſtom of Tithing, and wherein the Plaintiffs in Pro-

hibition joined, the Court would not grant a Conſultation; becauſe the Matter being upon a Cuſtom triable at Law, the Court Chriſtian were juſtly prohibited, tho' not in ſuch proper Form as they ought; and therefore they ruled the Plaintiff ſhould declare ſeverally in Prohibition, and ſo proceed as upon two Prohibitions. *Telv.* 128, 129.

2. It was ſaid by the Court, That two might join in a Prohibition, though the *Gravamen* was ſeveral; but they muſt ſever in their Declaration upon the Attachment. 1 *Vent.* 267.

5. *From whence it iſſueth.*

1. Prohibitions are grantable from the Courts of *Weſtminſter-Hall*, to hinder Proceedings in the Eccleſiaſtical Courts, though the Courts which grant ſuch Prohibitions cannot hold Plea of the Matter which they prohibit; as if the Eccleſiaſtical Court grant Probate of a Will made within a Manor, where the Probate thereof belongs to the Lord, as is 5 *Co.* 2 *Part* 73. *Fi. Ley* 28. *Doct. & Stud. Where the Prohibition is granted* in Banco Regis, *and where* in Communi Banco *the Difference*, Palm. 422.

See P. 365.

2. In the Common Pleas a Prohibition is not grantable *ſans* Suggeſtion on Record, but in *B. R. aliter*; for in the former, it is the Suit of the Party, in the latter, it is a Commiſſion prohibitory. *Palm.* 422.

3. The Court of Common Pleas may grant a Prohibition, and if the Matter after appear to be Spiritual, they may grant a Conſultation. 1 *Ro. Abr.* 170, 2.

4. One

4. One may have a Prohibition out of Chancery, or the King's Bench, upon a bare Surmiſe that he is ſued in the Spiritual Court for a Temporal Matter, *&c.* though in Fact there be no Suit. *Fitzh. Nat. Brev.* 43. (H) 4o. H. I. *Vide Practical Regiſter*, printed *anno* 1715. *ſub* Tit. *Bill.*

5. *Holt* Lord Ch. Juſt. In the Vacation-time one may reſort to the Chancery, and upon Suggeſtion, That the Spiritual Court hath proceeded to grant Adminiſtration to a wrong Perſon, may have a Prohibition out of that Court returnable *in Banco Regis* or *Communi Banco.* 1 *P. Will.* 43. Vide *le meſme Livre*, *fo.* 476.

6. No Prohibition ſhall be awarded out of Chancery, but in Caſe where the *King*, or his Courts, have Cognizance, and of Right ought to have. *Stat. of the Clergy.* 18 *E.* 3. *cap.* 5. Vide *Stat.* 9 *E.* 2. 1, *&c. Raſt.* 444, *&c.* 27 *H.* 8. *fo.* 14. 12 *H.* 7. *fo.* 22. 4 *Co.* 123. 6 *Co.* 23. 5 *Co.* 73. 22 *H.* 6. 46. *Fi. Ley* 28. *a.* 2 *Bulſt.* 197, 207 —— 215. 3 *Bulſt.* 116, 119, 158.— *Ro. Rep.* 119 — 252. *Keb.* 354. *Show.* 358. *Het.* 30. *Far.* 127. *Parl. Ca.* 162.

6. *Where it iſſues to.*

1. Prohibitions are grantable to almoſt all Sorts of Courts which differ from the Common Law in their Proceedings. To Courts Chriſtian, to the Admiralty, nay to the Delegates, and even to the Steward and Marſhal; and no Arguments can be raiſed from the Juriſdiction of any of theſe Courts

that it is different from the Common Law, &c. for Prohibitions lie in *Weſtminſter-Hall* to hinder Proceedings in Cauſes, which the Court, which grants ſuch Prohibition cannot hold Plea of; as to the Eccleſiaſtical Court which grants Probate of a Will made within a Manor where the Probate thereof belongs to the Lord of a Manor, as is 5 *Co.* 73. To the Marches of *Wales*, if they hold Plea of what belongs to the Court Chriſtian. 2 *Ro. Abr.* 313. are ſeveral Caſes to this Purpoſe, &c. *Show. Parl. Caſes* 63. So if a Biſhop grants Probate or Adminiſtration where is a peculiar Juriſdiction, or the like, as is elſewhere ſhewn.

See p. 365.

2. A Man may ſue a Prohibition to the Sheriff, That he ſuffer not the King's Lay Subjects to come to any Place at the Citation of the Ordinary *ad faciend. aliquas Negotiones, vel Sacram. præſtand', niſi in Cauſis Matrimonialibus & Teſtamentariis*; and the Party may thereupon have an Attachment againſt the Ordinary, if he cite or diſtrain any one to appear before him, or to take any Oath againſt his own Will. *Fitzh. Nat. Brev.* 41. *a.*

See P. 354.

7. *To whom to be directed.*

1. The Writ of Prohibition ſhall be directed as well to the Party, as to the Judge, or his Official, to prohibit them that they purſue no further. *Terms de la Ley ſub* Tit. *Prohibition.*

2. Prohibitions are directed to the Party, or Judge, or both. *Ha. Hiſt. Law* 41, 42. *Doct. & Stud. lib.* 2. *cap.* 28, 29.

3. It

3. It may be directed to the Judge not to hold Plea in such Case, and also to the Sheriff to restrain the Party that he do not sue. *Fi. Ley* 28. *Vide etiam Fitzh. Nat. Brev.* 41. *a.*

4. By the Writ of Prohibition, as well the Party and his Counsel, *&c.* as the Judge and his Register, *&c.* are prohibited to proceed any further in such Case. *Vide Bro.* Tit. *Prohibition. Fitzh. Nat. Brev.* 93. *Bracton, lib.* 5. *tract.* 5. *c.* 3. to 12. *Stat.* 50 *E.* 3. *Reg. New Book Ent.* 2 *Inst.* 601.

5. Prohibitions are directed either to the Judge, or Party or both, and, in Case they exceed their Jurisdiction, the Officer who executes their Sentence, and the Judges who pronounce, are both punishable in the Superior Courts of Common Law, at the Suit of the King, or of the Party, or both. *Ha. Hist. Law* 41, 42. See *Doct. & Stud.* and the other Books.

8. *How favoured.* Vide postea *the Suggestion good, or not, General.*

1. It is quite immaterial, whether the Prohibition were sued lawfully or erroneously; for that one shall not be punished for suing a Prohibition in the King's Courts. *Fitz. Nat. Brev.* 41. H. 42. G.

2. Where one surmises he is sued in the Spiritual Court for a Temporal Matter, *&c.* though he be not really sued, he may have a Prohibition out of Chancery or *Banco Regis. Fitzh. Nat. Bre.* 43. H. 1 *P. Will.* 43, 476. 1 *Ro. Abr.* 170, 2.

3. For preventing of Delay the Court gave further Time for the Plaintiff in the Prohibition to ſee, and inform himſelf better with the Suggeſtion for a Prohibition, which in the Principal Caſe he had not done, and to ſhew better Cauſe, elſe a Conſultation to be granted. 3 *Bulſt.* 315.

4. The Court refuſed a Conſultation tho' the Prohibition was irregular; for that the Matter was upon a Cuſtom triable at Law; ſo that the Court Chriſtian was juſtly prohibited, though not in ſuch due and preciſe Form as ought. *Yelv.* 129.

See before under this Title of *Prohibitions*, under the Diviſions, *At whoſe Inſtance awarded*; *whether ſeveral may join*; *from whence it iſſueth*; *where it iſſues to*; *to whom to be directed*, and elſewhere; *from whence, I conceive, it will very clearly appear, that theſe Writs are favoured in Law to hinder the great Incroachments, which might otherwiſe happen, to the Diminution of the Royal Dignity of the Crown and its Temporal Courts, as well as to the private Prejudice and Wrong of many of his Majeſty's good Lay Subjects, and other Reſiants.*

9. *The Suggeſtion.*

1. *General.*

1. One may have a Prohibition, either from Chancery, or the King's Bench, upon a bare Surmiſe, That he is ſued in the Spiritual Court for a Temporal Cauſe, tho' in Fact there be no Suit. See *Fitz. Nat. Brev.* 43. (H).

2. *Banco*

2. *Banco Regis*, *Trin.* 1727. The Biſhop of *Cheſter* contra *Dr. Stanley*.

The Defendant being refuſed Admiſſion to the Vicarage of *Preſton*, had recourſe to the Archbiſhop of *York* his Court for a *Duplex Querela*; the Plaintiff obtained Leave to ſhew Cauſe why a Prohibition ſhould not go upon the Face of the Libel; and now, on hearing Counſel for making it abſolute, it was alledged that the Libel ſet forth that the Vicarage of *Preſton* was vacated by the Promotion of the late Incumbent to the See of *Cheſter*, and that the Defendant was preſented under the Seal of the Duchy of *Lancaſter*, but that another Perſon was named to it under the Great Seal, wherefore the Plaintiff refuſed *Stanley* Admittance, and ſo the Libel concludes with a Demand upon the Biſhop to admit him. Upon this Matter the Counſel for the Prohibition argued, that it appeared upon the Face of the Libel, that this Matter of Right muſt come in Queſtion (to wit) whether a Preſentation under the Great Seal be a Revocation of a Preſentation under the Seal of the Duchy; for they ſaid the Biſhop can ſhew no Cauſe; and therefore as this Matter muſt neceſſarily involve in it a Matter of Right, a Prohibition ought inſtantly to go: But the Court were pleaſed to ſay, the Biſhop might poſſibly ſuggeſt, That the Defendant was *minus Idoneus*, ſo that it did not appear to them yet, that a Matter of Right muſt needs be involved in this Queſtion; and therefore till the Biſhop had ſuggeſted the Matter they would not grant the Prohibition. *Vide* 3 *Cro.* 653. 1 *Vern.* 295.

Note;

Note; *The Gentleman named under the Great Seal was the Biſhop of* Cheſter's *only Son.*

3. *Nelton* and *Sharpe* ſued a Prohibition againſt the Maſter and Wardens of *Wax-Chandlers*, upon a Libel exhibited for a Legacy given to the ſaid Corporation by the Teſtator of the Plaintiffs, and they ſurmiſed divers Obligations to be depending, which was true, and in the End a ſpecial Conſultation was granted, *ita quod* the Maſter and Wardens give Security to repay the Legacy if any Thing be recovered againſt the Executors *ſur ces Obligations*, *Mo. fo.*413. Whether Suggeſtion good or not, *vide Hard.* 131, 313. *Nelſon's Rep. of Caſes in Lord* Nottingham's *Time*, *fo.* 434.

2. *The Stile.*

In Writs of Prohibition the Suggeſtion is, and with Truth, *in præjudicium Coronæ Regis & Gravamen partis.* Show. Parl. Caſes 63.

3. *Rules in*; *and of the Conſultation.*

1. In all the Time of *H.* 3. and his Progenitors and ever ſince, if any ſued before any Judge Eccleſiaſtical within the Realm for any Thing, whereof that Court, by Allowance and Cuſtom, had not lawful Cognizance, the King did ever by Writ under his Great Seal prohibit their Proceedings; and if the Suggeſtion made to the King, whereon the Prohibition was grounded, was after found untrue, then the King, by his Writ

Writ of Conſultation under his Great Seal, did *not only* allow and permit *them to proceed, but commanded.* 5 Co. *De Jure Regis Eccleſiaſtico* 11. *For I take a Conſultation to be a* Mandatory *Writ that they ſhall proceed.*

2. Where the Matter is not of Spiritual Cognizance, a Prohibition lieth. *Ro. Abr. Prohibition*, F. 10.

4. *Whether the Suggeſtion be good, or not.*

1. *General to.*

1. Prohibition, and ſurmiſed the Defendant ſued him, being Executor, in the Spiritual Court for a Legacy; whereas the Plaintiff had a Releaſe, but had only one Witneſs to prove it; but a Conſultation was granted; but if he had ſurmiſed that he had pleaded this Releaſe in that Court, and produced his Witneſs, and that they would not allow it, becauſe he had not two Witneſſes, this had been a good Surmiſe, and it was ſaid the Plaintiff is at no Miſchief; *for he may have a Prohibition after Sentence given in that Court.* Cro. Eliz. 88. 3 Mod. 286. *Vide where the Eccleſiaſtical Courts refuſe ſuch Evidence as would be good at Law.*

2. A Prohibition may be granted by the Court of Common Pleas, to the Eccleſiaſtical Courts, *&c.* on Suggeſtion made to the Court of the Cauſe, though there be not any Plea pending in the ſame Court for the ſame Thing. *Hill.* 6 *Jac. Rauche* and *Wharton, per Cur'* contra *Walmeſley. Paſ.* 7 *Jac. Robinſon* and *Biſſe. Ro. Abr. Prohibition* 317. (H) *Caſe* 3.

3. Upon

3. Upon a Suggeſtion to have a Prohibition from the Exchequer to ſtay the *Probate of a Will* of Lands and Goods; becauſe the Teſtator was *Non compos*. *Atkins* argued That upon Suggeſtion, as this was, which goes to the whole Will, a general Prohibition ought to go; ſo upon Suggeſtion of a Revocation, or no ſuch Will; otherwiſe where the Suggeſtion is particular and concerns the Lands only, he cited 6 *Co.* 23 The Marquis of *Wincheſter*'s Caſe. *Hob.* 290 *Searle* and *Williams*'s Caſe, *Paſ.* 10 *Jac. Banco Regis*, *St. Emain*'s Caſe, 2 *Cro. Egerton*'s Caſe, *Cro.* 1 *Part*, 94, 114, 115, 165 391. *Vide Dy.* 201. *Stephens* againſt the Prohibition as to the Goods: And the Court declared, That unleſs the Plaintiff would go to Iſſue this Term, *Compos*, or *Non compos* they would not grant a Prohibition. *Hard.* 131.

4. Where one ſurmiſes he's ſued in the Eccleſiaſtical Court for a Temporal concern *&c.* though in Truth he be not ſued; yet he may have a Prohibition out of Chancery or King's Bench. *Fitzh. Nat. Br.* 43. H. 1 *P. Will.* 43, 476. 1 *Ro. Abr.* 170, 2. *Vide antea* from whence it iſſues, *&c.*

2. *Whether to be amended.*

* 1. *Trin.* 2 *Geo.* 2. *B. R. Dr. Bentley* and *The Biſhop of Ely.*

The Doctor's Counſel prayed Liberty to amend their Suggeſtion in any Matters of Form; the Court ſaid, That they could not allow them to amend the Suggeſtion in Subſtance; unleſs the other Side

Side would conſent; becauſe, by amending it in Subſtance, it would be a new Suggeſtion; and therefore there muſt be a new Motion for a Prohibition; however as it would be for the Intereſt of the other Side to conſent to allow them to amend in Subſtance, as well as Form, if there ſhould be Occaſion for it; for if this Suggeſtion ſhould be bad, the Doctor's Counſel would certainly make another; and ſo it would be a Means only of Keeping off the End of this Affair longer; the Court adviſed the Biſhop's Counſel to agree thereto, who did accordingly, and a Fortnight's Time was allowed the Doctor to amend his Suggeſtion.

2. *Mich.* 8 *Geo.* 2. *B. R. Sharpe* and *Lowther.* The Plaintiff before having libelled in the Spiritual Court for Tithes, the Defendant pleaded a *Modus* in Diſcharge of the Tithes of the Corn, Grain, and Hay, which was Part of the Tithes libelled for; and accordingly Rule was, that a Prohibition ſhould go for ſo much of the Tithes, as the *Modus* was in Diſcharge of; but by Miſtake the Suggeſtion ſet forth the *Modus* to be in Diſcharge of all Tithes, and the Declaration was in that general Manner; this Miſtake was not diſcovered till the Iſſue came down to be tried at the Aſſizes, and then the Counſel diſcovered it; ſo the Cauſe was not then tried: Upon this Mr. *Bootle, jun. now Serjeant*, moved that the Suggeſtion, and all the Reſt of the Proceedings might be amended in this Reſpect, upon Payment of Coſts, and giving the Defendant Liberty to plead *de novo.* The Lord Ch. Juſt. ſaid, That this was a Motion to amend the Iſſue,

in

in the very Subſtance of it; however, as
was a Sort of a feigned Iſſue, he did no
know but it might be granted; and ſo Ru
was to ſhew Cauſe. And now Mr. *Deniſ*
came to ſhew Cauſe, and argued, if th
Amendment was made, it would be
make a new Suggeſtion; and he ſubmitte
it, the doing that might be an Injuſtice
the Party; for by the Statute of *E.* 6. th
Defendant in Prohibition might be intitle
to a Conſultation, on Account of the Plai
tiff's not proving his Suggeſtion within ſi
Months; whereas this being to make a ne
Suggeſtion, the Time for proving it woul
be enlarged further; and by that Statute h
conceived, that it ought to have been pro
ved at the laſt Aſſizes. My Lord Ch. Juſ
ſaid, the Proof in this Caſe is by Witneſſ
in Court; but in thoſe Prohibitions, whe
the Plaintiff has a Time given him to d
clare in, he believed, it was never inſiſte
that the Suggeſtion ſhould be proved a
cording to that Statute; he ſaid furthe
there were the Proceedings in the Court b
low to amend by; accordingly the Rule w
made abſolute.

3. *Whether the Matter to be firſt pleaded b*
low.

Where-ever the Matter which you ſug
geſt for a Prohibition is foreign to the L
bel, you muſt plead it below, before yo
can have a Prohibition; otherwiſe it i
where the Cauſe of Prohibition appears u
on the Face of the Libel. *Salk.* 551.

4. *Whether to be firſt entered on a Roll.*

Holt Lord Ch. Juſt. If it be inſiſted upon a Prohibition cannot be moved for, till the Suggeſtion be entered on a Roll. *Watſon*, Biſhop of *St. David's* Caſe in *Salk.*

10. *The Declaration.*

1. *To agree with the Suggeſtion.*

Hill. 9 *Geo.* 2. 9. *B. R. Burton* and *Wilday.* On Rule to ſhew Cauſe why a Declaration in Prohibition ſhould not be made to agree with the Suggeſtion, Mr. *Noel* ſaid that the Difference between the Declaration and the other Proceedings was, that in the Declaration the Words *Inhabitants* and *Occupiers* both are ſet forth; but in the Suggeſtion only the Inhabitants, and ſubmitted it this was an immaterial Variance but ſaid, had it been material, yet in *Modus* it is well known, That where a *Modus* of one Sort is pleaded below, and a *Modus* of another Sort is proved on the Trial, a Conſultation ſhall not be granted; for which Purpoſe he cited *Yelv.* 55. And in Courts of Equity he ſaid it is well known; that upon Iſſues at Law directed to try a *Modus*, it is often made Part of the Order, That the *Modus* proved ſhall be marked upon the *Poſtea*, in order that the Court may ſee whether the Variance be material, between the *Modus* ſet out in the Plea and that *proved* upon Evidence.

Mr.

Mr. *Taylor* on the other Side ſaid, that th Suit below was a Church-Rate in the Pa riſh of *Mansfield*, in which there were fou Townſhips, and the Cuſtom pleaded belo was, that the Inhabitants of one of the Townſhips have Time, &c. paid to th Church-Rates as much as all the othe Three, and the Cuſtom he ſaid, ſet out i the Declaration was, That the Inhabitan and *Occupiers* of one of theſe Townſhips ha done ſo, which he ſubmitted it was a Va riance in Subſtance, and the Court were the ſame Opinion, and accordingly the Ru was made abſolute.

11. *Whether this Writ be grantable aft Conſultation.*

If a Prohibition be granted upon a Di charge of Tithes *ſur le Statute* 31 *H.* 8. i the Hands of an Abbot, and it be tried Law and the Plaintiff nonſuited, and Conſultation granted, and the Plaintiff Prohibition pleads the ſame Plea in Di charge of the Payment of Tithes, whic was alledged in the Prohibition; and whi the Eccleſiaſtical Judge accepts, and pr ceeds to Trial, a Prohibition lies, for t Trial at Law is final upon this Libel, an ſhall not be tried in the Eccleſiaſtical Cou again, it being proper for a Trial at La *Ro. Abr. Prohibition, fo.* 319. (O)

I 12. *Wh*

12. *Whether may be after Sentence, Judgment or Execution.*

1. Though one recover againſt another in Court Chriſtian in Debt, and ſue Execution there, Prohibition and Attachment *ſur ceo* lie. *Fitzh. Nat. Brev.* 41. D, E, F.

2. If the Spiritual Court hold Plea of what they have not Juriſdiction, a Prohibition as well lies after Judgment, and even Execution too, as before. 2 *Inſt.* 619.

3. Where any Court Temporal or Eccleſiaſtical do hold Plea of that whereof they have not Juriſdiction, the ſuperior Courts of Law may lawfully prohibit the ſame, as well after Judgment and Execution, as before. 2 *Inſt.* 602, 607, 609, 619.

4. A Prohibition goes as well after, as before Sentence. 3 *Mod.* 286.

5. After Sentence, if the Party appeal, a Prohibition lieth. *Mich.* 8 *Jac. Janver's* Caſe, *Ro. Abr.* 318. L. *Caſe* 3.

6. Where it appears in the Libel or the Proceedings in the Cauſe, That the Cognizance of the Cauſe does not belong to the Spiritual Court; a Prohibition may be moved for, and granted after Sentence; and this holds in all Caſes; but where one is ſued out of his Dioceſe; for there if he doth not take Advantage of it, before Sentence, he ſhall not have a Prohibition after Sentence, *Ratio eſt*, becauſe the Cauſe doth belong to the Spiritual Court, and though it doth not belong to that Spiritual Court, it belongeth to ſome other, and not to the

King's Temporal Courts. *Salk.* 548, 549. *Hob.* 79. *An.* 20. *b.* 1 *Ven.* 115.

7. If a Man be ſued out of his Dioceſe, and Anſwer without taking Exception to it, and after Sentence is given againſt him, he ſhall not have a Prohibition; becauſe he hath not taken Exception to the Juriſdiction below; but hath affirmed it. *Pa.* 15 *Jac. Banco Regis, Pudſey* and *Richardſon* the like Caſe. *Ro. Abr. Prohibition, fo.* 318. L. *Caſe* 1.

8. If it appears in the Libel, That the Court hath not Juriſdiction of the Cauſe, a Prohibition ſhall be granted after Sentence; but otherwiſe it is if it doth not appear in the Libel: But it ought to appear by Averment. *Mich.* 8 *Jac. Ro. Abr. Prohibition, fo.* 318. L. *Caſe* 2.

9. Generally if a Suit be in the Spiritual Court, and Sentence given for the Plaintiff, and thereupon the Defendant appeals, and then prays a Prohibition, none ſhall be granted, though if he had come before Sentence, it ought to have been granted; becauſe that it is inconvenient, after ſo great Expences and no Exception taken to the Juriſdiction, to grant a Prohibition. *Hil.* 9 *Car. Triſwell* and *Ro. Abr. Prohibition, fo.* 319. M. *Caſe* 1. But if a Suit be in the Spiritual Court for Tithes, where the Queſtion is whether the Lands, out of which the Tithes are ariſing, be within the Pariſh of the Parſon or out of it, within the King's Foreſt, after Sentence for the Plaintiff and an Appeal for the Defendant, a Prohibition ſhall be granted; becauſe it is all utterly out of their Juriſdiction to try the Bounds of a Pa-

riſh;

riſh; and alſo it concerneth the King; for if it be within the Foreſt of the King, he ſhall have the Tithes; *Et nullum Tempus occurrit Regi. Hill.* 9 *Ca. Banco Regis, Frezwel* and which concerned the Lord *Darcy* of *North*, a Prohibition granted *per Curiam.* Ro. Abr. Prohibition, fo. 319. M. Caſes 1,2.

10. Where a Man may be ſuppoſed to have Remedy by Appeal, no Prohibition lies. *Ro. Abr. Prohibition, fo.* 319. N. *Caſe* 1.

11. If a Man deviſe a Legacy to *B.* to be paid him within a Year after his Death, *Proviſo*, That if he died within this Year, that then this Legacy ſhould be void, and that it ſhould be divided between *D.* and *E.* and after *B.* dies within the Year, and his Executor ſues for the Legacy, and Sentence is given for the Executor; becauſe that they held the Condition to be void; yet no Prohibition lieth; becauſe that by Intendment he ſhall be aided by Appeal. *Mich.* 21 *Jac.* B. R. *Clark*'s Caſe, Prohibition denied. *Ro. Abr. Prohibition, fo.* 319. *Caſe* 2. *Yet Quære, if the firſt Sentence be affirmed on the the Appeal, if a Prohibition ſhall not then go, as the Condition is, as I take it, good in Law, or if no Prohibition lies from Law in ſuch Caſe, if Equity will not relieve on the Intention of the Teſtator that the Deviſee over ſhould take on ſuch Contingency, as the ſame, in the preſent Caſe, has actually happened.*

12. Prohibition after Sentence, *&c. Vide Lutw.* 1059. *Salk.* 335. 3 *Keb.* 123, 527, *Cro. Eliz.* 252. *Vide* this Head, *When to Iſſues.*

13. *The Libel to be produced to the Temporal Court.*

1. *Under whoſe Hand to be ſigned.*

Trin. 6 *Geo. in Banco Regis. Anonymus.*

* On Motion for a Prohibition, the Libel was produced ſigned by the Deputy Regiſter. But *Page* Juſt. doubted, whether there ought not to have been an Affidavit of its being a true Copy. Mr. *Munday* ſaid, that the Courſe of the Court was to allow ſuch Copy of a Libel, without Affidavit; accordingly a Rule was made to ſhew Cauſe.

14. *Coſts.*

1. *From what Time to be paid.*

Paſ. 1 *Geo.* 2. *B. R. Berry* and *Croſſe.*

* The Plaintiff recovered in Prohibition and the now Queſtion was, from what Time the Defendant ſhould pay Coſts; and the Court thought from the firſt Application for the Prohibition; for the Whole is but one Suit; and the Stat. 8 & 9 *Will.* 3. 10. which gives the Coſts in this Caſe ſays, the Plaintiff ſhall pay the Coſts of Suit. Mr. *Fazakerly* ſaid, that this very Point was determined ſome Time ago in the Caſe of *Henry Hogbton* and *Starkie.*

15. *Whe*

15. *What a Diſcontinuance of the Prohibition.*

1. What a Diſcontinuance thereof. See *Palm.* 422.

16. *Wherefore, and how diſcharged.*

1. A Prohibition was prayed; for that they cited him to anſwer to Articles in the Eccleſiaſtical Court, and did not deliver a Copy of the Articles; and it was granted *quouſq;* they ſhould deliver to him a Copy. But the Prohibition taken out was abſolute, which the Court being informed of, they did not think fit to grant a Conſultation, but to diſcharge that Prohibition by *Superſedeas*; whereupon they proceeded, and excommunicated the Party, for Default of Anſwering, who again moved the Court for a Prohibition, and one was granted, with a *Mandamus* in it to abſolve him, if it were for not Anſwering before they gave him a Copy of the Articles. 1 *Vent.* 5.

17. *Whether it may abate.*

If a Prohibition was granted by Queen *Elizabeth*, it continued in King *James*'s Time; ſo that the Spiritual Court might not proceed. *Mich.* 14 *Jac. B. R. Johnſton* and *Poppinger.* Ro. *Abr. Prohibition*, fo. 316. *Caſe* 1.

18. *Particular to the Conſultation.*

1. *What it is, and wherefore granted.*

1. A Conſultation is a Writ whereby a Cauſe being formerly removed by Prohibition out of the Eccleſiaſtical Court to the King's Courts, is by ſuch of the King's Courts remitted back to the Eccleſiaſtical Courts, to which it is a *Command* to proceed in the former Cauſe. *Vide Terms de la Ley, Prohibition and Conſultation.*

2. After a Prohibition brought if it appears to the Temporal Judge, that the Matter is fit to be determined in the Spiritual Court, and not in the Temporal, they will grant the Party a Conſultation commanding the Eccleſiaſtical Judge to proceed in the firſt Plea. *Terms de la Ley*, Prohibition.

3. If the Declaration in a Prohibition be good and the Plea for a Conſultation inſufficient, and yet Iſſue be joined and a ſpecial Verdict found, by which the Plaintiff hath not any Cauſe to have a Prohibition; yet if that that is found be impertinent to the Iſſue, no Conſultation ſhall be granted. 11 *Co. Priddle* and *Napper's* Caſe adjudged. *Ro. Abr.* Prohibition, *fo.* 320. *Caſe* 4.

4. After a Prohibition, if the Party to the Judgment of another who ſurmiſeth himſelf to have Juriſdiction, where, in Truth, he hath none; yet no Conſultation ſhall be granted. 2 *H.* 4. 10. *Ro. Abr.* Prohibition, *fo.* 320. *Caſe* 5.

5. If

5. If a Man hath a Prohibition upon a Libel for Tithes of Faggots, upon a Suggeſtion that the Faggots were made *De Groſſe Arbors* above twenty Years of Age, and in the Suggeſtion the Quantity of Faggots are miſtaken; yet if it appears that he made his Suggeſtion according to the Copy of the Libel given to him by his Proctor, no Conſultation ſhall be; for by the Statute 2 *H.* 5. he ought to have a true Copy of the Libel. *Mich.* 4 *Jac. B. R. Sumerton* and *Man* adjudged. *Ro. Abr. Prohibition*, *fo.* 320. *Caſe* 6.

19. *The Attachment.*

1. *Wherefore granted.*

1. An Eccleſiaſtical Judge prohibited may not proceed, without Danger of an Attachment. 2 *Inſt.* 610.

2. If the Judges of the Spiritual Court refuſe to receive the Prohibition; or will not allow it; and becauſe they bring the Prohibition, they make a Citation againſt the Party to anſwer before them for the ſame, he ſhall both have a new Prohibition, and alſo an Attachment againſt the Judges, if they proceed againſt him in their Courts; and it is immaterial, whether the Prohibition was ſued lawfully, or not; for that he ſhall not be puniſhed for ſuing a Prohibition in the King's Courts. *Fitzb. Nat. Brev.* 41. H. 42. G.

† See p. 875.

3. Attachment upon a Prohibition was brought againſt a Man, for ſuing a Plea of

a Lay Chattel, in Court Chriſtian againſt the King's Prohibition. *Paſ.* 5 *E.* 2. *fo.* 162.

4. If a Plea be held in Court Chriſtian for a Matter belonging to the King's Court without any Prohibition inforc'd, the Party may have an Attachment upon a Prohibition; becauſe the Law is a Prohibition in itſelf; for by the Law they ought to hold no Plea, but of that which belongs to their Juriſdiction. 12 *Co.* 59, 60.

+ *See many Caſes throughout this Work.*

2. *The* Præmunire.

1. *General.*

1. *Præmunire* is an original Suit and may be ſued in any Place. *Fitzb. Abr.* Tit. *Præmunire* 3.

2. It is taken either for the Writ ſo called, or for the Offence whereupon the Writ is granted. See much more *ſub hoc Tit.* in *Blo. Law Dict.*

2. *The ſeveral Species.*

Mr. Serj. *Hawkins*, diſpoſes the Offences coming under the Notion of *Præmunire*, under the following general Heads; 1ſt, Offences againſt the Prerogative of the Crown. 2. Offences againſt the Authority of the Crown; and thoſe of the firſt Kind, he diſpences under theſe Particulars following: 1ſt, Making Uſe of Papal Bulls. 2d, Derogating from the King's Common Law Courts.

Courts. 3d, Appealing to *Rome* from any of the King's Courts. 4th, Exerciſing the Juriſdiction of a Suffragan without Appointment. 5th, Refuſing to elect, or conſecrate the Perſon nominated by the King to a Biſhoprick. 6th, Maintaining the Pope's Power. 7th, Bringing *Agnus Dei's*. 8th, Contributing to the Maintenance of a Popiſh Seminary. 9th, Refuſing the Oaths. *Hawk. Pleas, Cro.* Tit. *Præmunire.*

3. *What, and from whence denominated, &c. and who may, and how incur it.*

1. *General.*

1. A Prohibition often lies where a *Præmunire* does not, as where the Matter of the Action belongs to the Spiritual Court, but not the Cauſe in ſuch Form as they are there proceeding; but where it is of a Lay Matter, which belongeth not to the Spiritual Court, a *Præmunire* lieth. *Lit. Bro.* 11. *Caſe* 57. *Bro. Grand Abr. Præmunire* 16. *Doct. & Stud. lib.* 2. *c.* 25.

2. A *Præmunire* is a Writ which lies where one ſues another in the Spiritual Court, for any Matter determinable in the King's Courts, for which great Puniſhment is ordained by divers Statutes, (*viz*) That he ſhall be out of the King's Protection, and impriſoned without Bail or Mainprize, during the King's Pleaſure, till he hath made fine at the King's Will; and that all his Lands and Goods ſhall be forfeited, *&c.* *Les Terms de la Ley*, Tit. *Præmunire.*

3. *Præ-*

3. *Præmunire* comes from the Verb *Præmonere*, being barbarouſly turned into *Præmunire* to forewarn, or bid the Offender take Heed; of which a Reaſon may be gathered from the Words of the Statute 27 *E.* 3. *c.* and the Form of the Writ in *Old Nat. Brev. fol.* 143. *Præmunire fa. Præfatum Præpoſitum & J. Procuratorem, &c. quod tunc ſint coram nobis, &c.* which Words can be referred to none but Parties charged with the Offence. *Blo. Law Dict.* Tit. *Præmunire. Vide* 3 *Inſt. fo.* 119.

4. It is called from the Word of the Writ and rightly; for he who is *Præmonitus* is *Præmunitus.* 3 Inſt. 120.

5. *Præmunire* is taken either for the Writ ſo called, or for the Offence, whereupon this Writ is granted. *Blo. Law Dict.* ſub Tit. *Præmunire.*

6. It lieth where one is ſued in the Spiritual Court for a Matter determinable in the King's Courts. *Terms de la Ley* ſub hoc Tit.

7. This is a Suit given by Statute, and there was none ſuch at Common Law. *Bro. Abr.* Præmunire 15. *But the Offences againſt which Remedies are provided by the Statute were moſt, if not all, Offences at Law, and as ſuch puniſhable in the Superior Temporal Courts before any of theſe Statutes came, as appears from many Authorities in the Books.*

8. He who procures one to ſue in Court Chriſtian, ſhall forfeit as much as he who ſueth, and is Principal, and in equal Degree of *Præmunire, &c.* 3 Inſt. 125.

9. The Statutes of *Præmunire* inflict Puniſhment, as well upon the Judge, as the Party. See 10 *H.* 4. 164. and 2 *Leon.* 182, 183.

10. Where

10. Where the Suit, in the Eccleſiaſtical Court, is of a Lay Matter, which never belonged to the Spiritual Court, of it a *Præmunire* lieth, as of Debt againſt Executors, in Simple Contract, or *pro Læſione Fidei*, on promiſe to pay 10*l.* by ſuch a Day. *Lit.* Sect. 11. *a. Caſe* 57.

11. If one religious obtain of the Biſhop of *Rome* to be exempt from Obedience, he is in Caſe of a *Præmunire*, which is an Offence, as hath been ſaid, *contra Regem, coronam, & Dignitatem ſuam.* 5 Co. De Jure Regis Eccleſiaſtico 23. b.

12. If the Eccleſiaſtical Court excommunicate one for Treſpaſs, or other Matter Temporal, a *Præmunire* lieth againſt both Party and Judge; for that the King may loſe great Advantage, which he ſhould have had from ſuch Suits being in his Majeſty's Temporal Courts; and the Party is injured by being in ſuch Caſe called before the Eccleſiaſtical Court to anſwer before them of ſuch Things as belong to the Laws of the Realm. *Doct. & Stud. lib.* 2. *cap.* 32. 3 *Inſt.* 121. 1 *Ven.* 15.

13. If a Man leaſe his Vicarage for Years, or Life, rendring Rent, and ſue in Court Chriſtian for the Rent, a *Præmunire* lieth. *Bro. Abr.* Præmunire 5.

14. It was adjudged *per totam Curiam*, That a Suit in the Eccleſiaſtical Court within the Realm, for a Temporal Cauſe, was in the Caſe of a *Præmunire.* 3 Inſt. 120.

15. At a Convocation holden 22 *H.* 8. by the whole Clergy, the King was acknowledged ſupreme Head of the Church. After this, to wit, 24 *H.* 8. it appeareth, that the Stat.

Stat. of *Præmunire* remained in Force again *Eccleſiaſtical Judges* for holding Pleas mee ly determinable by the Common La 3 *Inſt.* 121.

16. He who ſues in the Eccleſiaſtic Court for Forgery of *a Will, or Teſtamen* incurs a *Præmunire.* 3 Inſt. 121.

17. The Biſhop of *Norwich* was attaint a *Præmunire ad ſectam Regis*, on this Caſe At *Thetford* in *Norfolk* was a Cuſtom, Th all Eccleſiaſtical Cauſes within that Tow ſhould be determined before the Dean, ha ving a peculiar Eccleſiaſtical Juriſdiction and that no Inhabitant of the ſaid Tow ſhould be drawn before any other Eccleſiaſt cal Judge; and that every one, ſuing con trary to that Cuſtom, the ſame being pre ſented before the Mayor of *Thetford*, ſhou forfeit ſix Shillings and eight Pence, and a Inhabitant of *Thetford*, for an Eccleſiaſtic Cauſe ariſing within that Town, ſued an other before the Biſhop of *Norwich* in th conſiſtory Court of *Norwich*; and this Mat ter was preſented before the Mayor accord ing to this Cuſtom, and the Biſhop thoug fit to cite the Mayor to appear before hi at his Houſe at *Hoxton* in *Suffolk*, *pro ſalu Animæ*, for taking this Preſentment. Th Mayor appeared, and the Biſhop was plea ſed, *ore tenus*, to injoin the Mayor, *on Pai of Excommunication*, to *adnul* the ſaid Pre ſentment before a Day certain by his Lord ſhip, for that Purpoſe fixed; for which hi Lordſhip was attainted of a *Præmunire fu Confeſſion* before *Fitz-James* Lord Ch. Juſ and the Court of King's Bench, *ſur le Sta* 16 *R.* 2. by which Judgment two Point ar

See Introd: p. 21.

e cleared. 1ſt, *That the Statutes of* Præ-munire *extend to Eccleſiaſtical Courts within his Realm.* 2. That after the King was in poſſeſſion of his Supremacy, the Biſhop incurred the Danger of a *Præmunire.* 3 *Inſt.* 121, 122. 12 *Co.* 37.

18. Derogating from the King's Common Law Courts was an high Offence, even at the Common Law, and is made a *Præmunire* by many ancient Statutes; for by the 27 *E.* 3. and 38 *E.* 3. of *Proviſors*, if any ſubject draw any one out of the Realm, in Plea whereof the Cognizance pertains to the King's Courts; or of Things whereof Judgment be given in the King's Courts, he ſhall be warned to appear, *&c.* in proper Perſon at a Day containing the Space of *Two Months*, at which Day, if he do not appear, he, and his Proctors, *&c. ſhall be put out of the King's Protection, his Lands and Chattels forfeited, his Body impriſoned, and ranſomed at the King's Will, &c.* Hawk. Pl. Cro. *Tit.* Præmunire 14. *See the ſeveral Statutes of* Proviſors, *and the Conſtructions thereof, and particularly upon the Words*, Vel alibi, *ſee alſo hereafter, Charities, Appropriations and Impropriations, Donatives, Free Chapels*, &c.

2. *Rules, and Examples thereof.*

1. Where the Cauſe is originally of Eccleſiaſtical Cognizance, tho' in Truth the Cauſe, all Circumſtances being diſcloſed, belongs to the King's Courts, and is determinable at Law; yet no *Præmunire* lieth, but a Prohibition, as in Caſe of

of Subtraction of Tithes, and ſo in Caſe Tithes of Wood, ſurmiſing that they w *Sylvæ Cæduæ* under the Age of twenty Ye when in Truth they were above twe Years, here a Prohibition lieth, but no P *munire.* 12 Co. 39. Vide *Bro. Præmunire*

2. Where the Cauſe originally apperta eth to the Cognizance of the Eccleſiaſti Courts; yet if he ſue for it in the Nat of a Suit, which doth not belong to Eccleſiaſtical Court, but to the Comm Law, a *Præmunire* lieth, as in the Caſe Tithes carried away when ſevered from nine Parts, which Action by Matter ap rent belongeth to the Temporal Courts; ſuch Caſe both the Actor and Judge inc the Danger of a *Præmunire*, and ſo was *T bervile*'s Caſe in *Spilman*'s Reports, 17 *H.* So if a Mortuary be delivered to a Parſ and be retaken, and he ſue for it as for a Mo tuary delivered to him and carried aw he is in Caſe of *Præmunire.* 12 *Co.* 39, but if, after the Repriſal, he ſue for it as a Mortuary not executed, in the Nature o Suit, which belongeth to the Court Ch ſtian; upon the Truth of the Caſe there Cauſe of a Prohibition, but not of a *Præ nire.* So in the Caſe of a Suit for Tithes Woods above twenty Years Growth. So it appear upon the Face of the Libel, th it belongs not to the Spiritual Court, a *Pr munire* lieth. 12 *Co.* 39, 40. Vide *B Præmunire* 16.

3. Where the Cauſe originally belongs Common Law, there though the Eccleſiaſt cal Courts libel for it according to the Cou of their Law; yet a *Præmunire* lieth; f th

See P. 206.

hat it draweth the Cauſe *ad aliud examen*, nd deprives the Subject of the Benefit of the Common Law, which is his Birth-right; o that if the original Cauſe be Temporal, hough the Proceeding be by Citation, Li-el, *&c.* in the Eccleſiaſtical Court, yet hey are in Danger of a *Præmunire*, and the eaſon is expreſſed in the Writ; for that he ndeavoureth to draw *Cognitionem, quæ ad uriam Domini Regis pertinet, ad aliud exa-en*, to wit, to decide that by Eccleſiaſtical aw, which is determinable at Common aw. 12 *Co.* 40, 41. 3 *Inſt.* 120, 122. 2 *Co.* 38. *Doct. & Stud. lib.* 2. *c.* 24. *Bro. Ab. Præmunire*, *Barloe*'s Caſe, *&c.*

4. *Statutes concerning.*

1. *Conſtructions of.*

1. Where the Statute 16 *R.* 2. *c.* 5. ſaith, *in Curia Romana, vel alibi*, Eccleſiaſtical Courts within the Realm, are within the Word *Alibi.* 3 Inſt. 120.

2. The Statute of *Præmunire* is *in Curia Romana, vel alibi*, the which, *alibi*, is intended in the Biſhops Courts; ſo that if a Man be ſued there for a Thing which belongs to the Common Law, he ſhall have a *Præmunire*, and ſo it hath been adjudged; and ſo was the Opinion of the Court. *Paſ.* 11 *H.* 7. which Judge *Fitzh.* ſays, he heard himſelf, *&c. Fitz. Abr. Præmunire* 5.

3. The Effect of the Statute 16 *R.* 2. is, if any purſue or cauſe to be purſued in the Court of *Rome*, or *elſewhere*, any Thing which

which toucheth the King, against him, [illegible] Crown, and Regality or his Realm, th[illegible] Notaries, Procurators, &c. Fautors, & [illegible] shall be out of the King's Protectio[illegible] 3 *Inst.* 119.

4. The Words, *Avant le Roy & son Co[illegible] cel*, in the Stat. 27 *E.* 3. intends the Ki[illegible] and the Lords of Parliament, in Parl[illegible] ment, which is a Court of Justice. 3 *I[illegible]* 125.

5. To be *at the King's Will*, *hæc est [illegible] luntas Regis*, (*viz.*) *Justiciarios suos & [illegible] gem suam*, & *non per Dominum in Camera s[illegible] vel aliter.* 3 Inst. 146.

6. *Hors de la Protection le Roy*, by th[illegible] Words the Person attaint in a *Præmunir[illegible]* disabled to have any Action, or Remedy [illegible] the King's Law, or his Writ; for the L[illegible] and the King's Writs, are the Things whe[illegible] by a Man is protected, and aided; so [illegible] he that is out of the King's Protection, [illegible] out of the Aid and Protection of the L[illegible] 3 *Inst.* 126.

7. *Et Lour Terres, Biens, & Chateux [illegible] fait au Roy*, is intended of the Lands wh[illegible] he hath in Fee-simple, or for Life, wh[illegible] the Delinquent might lawfully forfeit; [illegible] not Lands in Tail; for Tenant in Tail [illegible] only forfeit for Life; for that was all [illegible] could lawfully forfeit at the making of [illegible] Statute, either in Case of Treason or F[illegible] ny; and so was resolved in *Trudgin* of [illegible] *von*'s Case, who was attainted of *Præmu[illegible]* upon the Statute 13 *Eliz. cap.* 2. And n[illegible] this is a new Kind of Forfeiture given [illegible] this Law, and is Penal, and cannot, [illegible] Equity, extend further than the Wor[illegible]

and therefore this Act extendeth not to the Forfeiture of Fairs, Markets, Rents-charge, Rents-ſeck, Warrens, Annuities, or any other Hereditaments, that is not within this Word *Terræ*. 3 Inſt. 126.

8. *Lour Corps impriſon, & Rents al Volunt le Roy.* The Greatneſs of their Puniſhment, ſheweth the Greatneſs of the Offence. 3 *Inſt.* 126.

9. The Statute 16 *R.* 2. is ſtrictly penned againſt Offenders; for firſt it extendeth to all Perſons, of what Quality or Sex ſoever, the Words being, *if any*. 2. To all Courts of what Juriſdiction ſoever, and whether holden by Right or Wrong *in Curia Romana, ſeu alibi*, which Word *Alibi*, is a Word of large Extent. 3. To all Things whatſoever, *where any Thing*, which Words are as general as can be. 4. Not only againſt the King, his Crown and Dignity, but againſt the Kingdom alſo, *againſt the King, his Crown and Regalty, or Realm.* 5. This Act extends, not only to *Procurors, Abettors, Maintainers, Counſellors*, &c. which are known Words in the Law; but to *Favourers, Fautores*, which Word was largely extended in the Reign of *H.* 8. where it appeareth that *Cliffe*, a Parſon, as is reported by *Spilman* Juſt. 21 *H.* 8. granted to the Cardinal an Annuity ſo long as he ſhould be Legate, *at decentius & ſublimius ſe gereret, in Authoritate ſuâ Legatinâ*, which the Cardinal had by Bull, and paid to him ten Marks in the Name of Seiſin, and he was adjudged a Fautor. 3 *Inſt.* 126. See the Stat. 25 *E.* 3. *c.* 22. 25 *E.* 3. *Stat. De Proviſoribus*, 38 *E.* 3. *c.* 1, 2, 3, 4. 3 *R.* 2. *c.* 3. 7 *R.* 2. *c.* 12.

12 *R.* 2. *c.* 15. 13 *R.* 2. *St.* 2. *c.* 2. 16 *R.* 2. *c.* 5. 2 *H.* 4. *c.* 3 & 4.

10. At the Petition and earneſt Requeſt of the Clergy, *Anno* 1 & 2 *Ph.* & *Mar.* it was enacted, That the Eſtates of the diſſolved Monaſteries, might be enjoyed by the Crown and their Patentees, in Manner as they had to that Time been, *by due Order and Courſe of the Laws and Statutes of the Realm*; and that all ſuch as moleſted them therein, ſhould incur the Danger of the Statute of *Præmunire's* of the 16 *R.* 2. and ſuffer and incur the Forfeitures, and Pains contained in the ſame. *Stat.* 1 & 2 *Ph.* & *Mar.*

I believe no Body can doubt, but Queen *Mary* would have been glad to have ſeen theſe Livings reſtored to the Church, to have been uſed to the ſame ſuperſtitious and idolatrous Uſes they were imployed before the Reformation: And I dare be confident none can Queſtion but that the Clergy, would have been glad to have received them back to the ſame abominable Purpoſes, had ſhe or they held it ſafe to have gone about ſuch a Work; but they were too well aware of the powerful Adverſaries they ſhould make to themſelves, by ſuch an Attempt; and therefore, tho' the Queen ſufficiently ſhewed her Inclination, by reſtoring the uſurped Supremacy to the See of *Rome*, &c. that ſhe would have been glad to have done this too; and tho' the Clergy, at that Time gave ſignal Inſtances of their Thirſt after Power, or rather Tyranny, yet neither Queen nor Church thought fit to make any Attempt upon theſe Things; but, thought proper, though no Doubt very unwillingly, to leave them as they found them; and therefore whether that the Queen was too forward, and diſcovered too ſtrong an Inclination to ſuch Alteration, or that the Clergy, to recommend themſelves to the People, were to put on this Appearance of Peace and Acquieſcence to the Laws in Being, I ſhall not take upon me to determine; but this is certain, thus the Clergy prayed, thus was enacted, with this further remarkable, that the Crown and Patentees ſhould enjoy, *in manner, as they had to that Time by due Order*, and *Courſe of the Laws and Statutes of the Realm*, which in my Apprehenſion, amounts to no leſs than an Admiſſion, that the then Poſſeſſors of theſe Livings were in of good and lawful Eſtates of and in the ſame; therefore it muſt needs ſound very harſh, to a Proteſtant Ear, to hear another Proteſtant, or any who pretends himſelf ſuch, either aſſert or inſinuate theſe Things ſhould be reſtored, or ſubjected to any other Juriſdiction, than the Wiſdom of the Law has aſſigned.

11. The

11. The Statute 1 *Eliz.* repealing 1 & 2 *Ph. & Mar.* hath an expreſs Proviſo, That it ſhall not extend to repeal any Thing therein in any wiſe relating to *Præmunire's*: But that all ſuch Matter ſhould ſtand, which is that no Perſon ſhall moleſt or unquiet, by Proceſs out of any Eccleſiaſtical Court, either in or out of the Kingdom, or by Colour of any other Spiritual Juriſdiction or otherwiſe, contrary to the Laws of the Land, any Perſon or Perſons, for any Thing Parcel of the Poſſeſſions of any religious Houſe, without endangering a *Præmunire* in the 16 *R.* 2. and the ſaid Act of *Eliz.* revives the Stat. 25 *H.* 8. *c.* 10. which makes it a *Præmunire*, in a Dean and Chapter, *&c.* for not electing, certifying, or admitting of a Biſhop, by which Statute it is expreſly provided, That the ſaid Statute 1 *Eliz.* never intended to take away the Offence of *Præmunire*, but on the contrary provided for it. 12 *Co.* 39.

5. *Where Principals and Acceſſaries.*

1. A *Præmunire* lieth againſt one as Procurator, and another as Attorney, and another as Counſellor, *&c.* *Fitz. Abr. Præmunire* 4.

2. A Writ *ſur le Stat.* of *Proviſors* was ſued by the Abbot of *Waltham* againſt ſeveral, againſt ſome as Principals, and others as Acceſſaries, and now the *Præmunire facias* was returned, and the Principals did not appear, and they were put out of the King's Protection, and their Lands and Chattels

forfeited. 44 *E.* 3. *fo.* 7. *Caſe* 6. *Vide* 8 *H.* 4. 6.

3. *Præmunire* againſt ſeveral, ſome as Principals and ſome as Acceſſaries, and at the Day of the Return, the Principals did not come in; wherefore they were out of the King's Protection, and their Lands and Chattels forfeited, and the Plaintiff prayed that the Acceſſaries who appeared might anſwer. *Fencot*, they are not to anſwer, till the Principals attainted, the Judgment for Default that they ſhall be *extra Protectionem Regis, their Lands and Chattel: forfeited*; but this is no Attainder. *Thorpe* Ch. Juſt. It is but a Pain or Penalty given by the Statute, that if they neglect to come at the firſt Day, that they ſhall be *extra Protect. Regis*, their Lands and Chattels forfeited; but this is no Attainder but a *Capias* ſhould iſſue againſt them, and if they do not appear upon that, then an *Exigent*, and ſo the Statute proves, That they ſhall anſwer, elſe it would be in vain to award Proceſs. *Bro. Abr. Proviſion*, or *Præmunire* 4.

4. By the Act 27 *E.* 3. Procurers, Attornies, Executors, and Maintainers, ſhall have the ſame Puniſhment as the Principal. 3 *Inſt.* 125.

5. The Plaintiff in *Præmunire* may chuſe whether he will make them all Principals, or one Principal, and the other Acceſſaries; but the Damages ſhall be ſeverally taxed. 3 *Inſt.* 125.

6. He who procures one to ſue to the Court Chriſtian, ſhall forfeit as much as he who ſueth, and is Principal as well as the other, and is in equal Degree of *Præmunire*.

But

But if they both be indicted, the one of the Act, and the other of the Procurement, and he charged with the Procurement is found guilty, and the other by another Inqueſt is found Not guilty, Judgment ſhall never be given againſt him who was indicted of the Procurement; becauſe he cannot be an Offender; but in Reſpect of the Offence of the other. 3 *Inſt.* 126.

7. Where ſeveral *Præmunire's* for the ſame Offence, but againſt ſeveral Perſons, as Procurators, Attornies, Counſellors, *&c.* the Damages ſhall be taxed ſeveral. *Fitzh.* Tit. *Præmunire* 4.

8. In *Præmunire ſur le Stat.* all are Principals. *Fitz. Abr. Præmunire* 12.

6. *Suits.*

1. *Who may have this Writ.*

1. The King may have his *Præmunire* and the Party his Action. *Bro. Abr. Præmunire* 13.

2. The King may have his *Præmunire*, (for no one elſe can) but the Author, *quæres ſur ceo*, and the Party grieved his Action *ſur le Caſe* alſo. *Bro. Abr.* Title *Præmunire* 13, 16. *Vide* 3 Inſt. 121, 125. *Where it lies for a common Perſon.*

3. A *Præmunire* was brought by the Preſentee or Incumbent of the King. *Qui tam pro Domino Rege quam pro ſeipſo ſequitur.* Bro. Abr. Præmunire 7.

4. A *Præmunire* lieth as well for the Party, as for the King, and they both may join in one Writ. 3 *Inſt.* 125.

5. *Anno* 17 *H.* 7. *Spilman* reporteth, That one *Turbervile*, as well for the King, as for himſelf, ſued a *Præmunire*, againſt a Parſon for ſuing for Tithes in the Eccleſiaſtical Court, alledging the ſame to be ſevered from the nine Parts, and Judgment was againſt the Defendant. 3 *Inſt.* 121.

See P. 398.

6. For *Læſione Fidei* upon a Promiſe to pay 10 *l.* by ſuch a Day, if the Court Chriſtian interfere, a *Præmunire* lieth. *Lit. Bro.* 11. *a. Caſe* 57.

2. *How to be commenced.*

The Suit in *Præmunire* need not be by original Writ, but if the Defendant be *in Cuſtodia Mareſchalli*, the Suit may be againſt him by Bill; becauſe the End of giving the Two Months, was that they ſhould have Notice, which is ſatisfied: And therewith agree the Precedents; and that though the Defendant cannot be ſued in any other Court when *in Cuſtodia Mareſchalli*. 3 Inſt. 125.

3. *The Appearance.*

1. *How to be made.*

1. The Defendant in *Præmunire* may not appear by Attorney, but in Perſon, though he be a Peer or Lord in Parliament; unleſs

leſs by a ſpecial Writ out of Chancery. *Bro. Abr. Præmunire* 15.

2. In *Præmunire* he may not make an Attorney, but in ſpecial Caſes. *Lit. Bro.* 115. *b. Caſes* 526.

3. In *Præmunire* the Defendant appeared by Attorney, and becauſe he did not come in Perſon, he was condemned, and the Sheriff returned the Writ ſerved *prout Breve exigit, &c.* and doth not mention, That he was ſummoned two Months *juxta Statuta*, and yet good. *Quod nota*, ſays Lord *Brooke*, in his Abridg. *Præmunire* 18.

4. If the Defendant in *Præmunire* comes not in at the Day, *&c.* by the expreſs Letter of the Law, Judgment ſhall be given againſt him, according to the Act 27 *E.* 3. 3 *Inſt.* 125.

5. By the Statute 38 *E.* 3. *c.* 2. The Defendant ought to appear in Perſon; and therefore he cannot appear by Attorney, without a ſpecial Writ out of Chancery, and the Act doth as well bind *thoſe who are Lords of Parliament, as others.* 3 Inſt. 125.

6. In *Præmunire*, the Defendant ſhall not make an Attorney, without ſpecial Writ, directed to the Juſtices for that Purpoſe. *Fitz. Nat. Brev.* 26. M.

7. The Defendant was reaſonably ſummoned in *Præmunire*, according to the Statute, and did not appear, for which he was adjudged out of the King's Protection. *Bro. Ab. Præmunire* 3, 4.

8. A *Præmunire* was ſued by the King againſt *T.* for procuring and abetting another to ſue Bulls, *&c.* and on his demanding Judgment if the Action lay againſt him on-

ly, &c. The Statute is, that the *Abettor* ſhall have the ſame *Puniſhment* as thoſe who ſue to the Court of *Rome*, &c. Fitzh. Abr. Præmunire 9.

9. *Præmunire* was againſt Three, who were reaſonably ſummoned according to the Stat. and did not come in or appear, for which it was agreed, that they ſhould be out of the King's Protection, and their Lands and Chattels forfeit, &c. *Fitzh. Abr. Præmunire* 7.

10. *Per Gaſcoigne*, where the Defendant appears in *Præmunire* and is convicted, he doth not forfeit his Lands; for he doth forfeit them, but for Contumacy or Default *tamen hoc videtur per le Stat.* 27 *E.* 3. but if it be *ſur le Statute* 16 *R.* 2. he forfeits his Lands upon every Judgment there; and theſe muſt be underſtood of, and to extend to, all ſuch Lands as he had *Tempore actus facti & poſtea*, if it be upon Verdict, as in Caſe of Felony or Treaſon. *Bro. Abr. Præmunire* 20.

4. *The Courſe of Proceeding.*

1. *General to.*

1. A *Præmunire* ſhall be maintainable by Bill *in Banco Regis*, altho' the Party be not *in Cuſtod. Mareſchalli*, &c. Lit. Bro. 11. Caſe 18.

2. *Dicebatur*, That a *Præmunire* ſhall be maintainable by Bill *in Banco Regis*, tho' the Party is not in Cuſtody. *Bro. Bill* 1. and frequently many Clerks were drawn to anſwer

to

to Bills there who were not in Cuſtody Mareſc. Bro. *Præmunire* 1. *Lit. Bro.* 3. *Caſe* 18.

3. The Courſe of Proceeding in *Proviſors* or *Præmunire*, vue Stat. 3 R. 2. c. 3. *& les auter Statutes & les Conſtructiones ſur ces.*

5. *The Pleadings.*

1. *General to.*

1. *A.* was indicted *ſur le Statute* 1 & 13 Reg. *nunc cap.* 1 & 2. *de Præmunire*, for aiding one *B.* knowing him to be a principal Maintainer of the Authority, and Juriſdiction of the Biſhop and the See of *Rome*, with theſe Words in the Indictment, *Videlicet contra formam Statut. prædict. &c.* Whereupon he was impriſoned and his Indictment certified *in Banco Regis*, and for Default of theſe Words being expreſly mentioned in the Acts (viz.) *on Purpoſe, and to the Intent to ſet forth and extol the Authority, &c.* it was thought by the greater Part of all the Juſtices (being aſſembled for this Purpoſe) that the Indictment was inſufficient notwithſtanding the Words *contra formam Statuti* were in the Indictment. *Dy.* 363. *a.*

6. *The Trial.*

1. *By whom to be.*

No Nobleman ſhall be tried by his Peers, but only at the Suit of the King upon an Indictment of High Treaſon, or Miſpriſion of

of Treaſon; but in the Caſe of a *Præmunire*, or the like, tho' it be at the Suit of the King, he ſhall not be tried by his Peers but by Freeholders. 3 *Inſt.* 30.

7. *The Judgment.*

1. *General.*

1. *Vide the Pope an Uſurper, the Courſe &c. the Oppoſition, &c. the Conſequence &c.*

2. By Stat. 16 R. 2. *c.* 5. The Puniſhment of a *Præmunire* is, that the Offender ſhould be out of the King's Protection, attached by their Bodies, and loſe their Lands Tenements, Goods and Chattels. *See the Stat. alſo* Blo. Law Dict. *ſub Tit.* Præmunire.

3. The Judgment in *Præmunire* is, if the Defendant be in Priſon, *quod prædictus R. ſit extra protectionem Domini Regis, & Terras, & Tenementa, bona & catalla Domino Regi forisfaciat, & quod Corpus ejus remaneat in Priſona ad voluntatem Regis*, as in the Book of Entries. *Raſtal Judgment* 465. and this Judgment is given by the Statutes of 25 *E.* 3. *c.* 22. *de Proviſoribus.* 27 *E.* 3. *c.* 1. 16 R. 2. *c.* 5. And if he be not in Priſon then the Judgment is, *quod prædictus R. ſit extra protectionem Domini Regis, & Terras & Tenementa, bona & catalla Domino Regi forisfaciat, & quod capiatur.* 3 Inſt. 218.

4. A *Præmunire* was againſt Three, who were reaſonably ſummoned according to the Statute and did not come in; wherefore

was adjudged that they be out of the King's Protection. 43 *E.* 3. 6. *Vide Stat.* 27 *E.* 3. 5. If the Defendant in *Præmunire* appear and plead, and the Iſſue be found againſt him; or if he demur in Law, *&c.* Judgment ſhall be given againſt him, that he ſhall be out of Protection, *&c.* 3 *Inſt.* 125. *See the Book* 8 H. 4. 6.

6. The King preſented to a Benefice, and his Preſentee was diſturbed by one who had gotten Bulls from *Rome*, for which Offence he was condemned to perpetual Impriſonment, *&c.* 5 *Co. De Jure Regis Eccleſiaſtico* 15. *a.*

7. The Court awarded that the Defendant in *Præmunire* ſhould go into perpetual Priſon, and that the Plaintiff ſhould recover his Damages as he had declared, *&c.* *Bro. Abr. Præmunire* 7. *Vide* 2. *a.*

8. The Judgment in *Præmunire* is, that the Defendant ſhall be from thenceforth out of the King's Protection, and his Lands and Tenements, Goods and Chattels forfeited to the King, and that his Body ſhall remain in Priſon at the King's Pleaſure. *Co. Lit.* 129. *b.* 130. *a.* *Bro. Abr. Præmunire* 4.

9. Tenant in Tail ſhall only forfeit his Eſtate for Life for this Offence. *Co. Lit.* 130. *a.* 391. *a.*

10. Attachment *ſur un Prohibition* was brought by the King and the Incumbent; for that the King had preſented the Incumbent to a Benefice, and the Defendant brought Bulls from *Rome* in Diſturbance thereof, *contra formam Statuti*, which the Defendant acknowledged; wherefore the Court awarded that the Defendant ſhould go

go into perpetual Priſon, and that the Plaintiff ſhould recover his Damages as he ha declared, &c. *Bro. Abr. Præmunire* 7.

11. The Abbot of *Waltham* died 45 *E.* and *Nicholas Morris* was elected Abbot, wh for that Abbey was exempt from ordinar Juriſdiction; he ſent to *Rome* to be confirm ed by the Pope; and becauſe the Pope b his Conſtitutions had reſerved all ſuch Co lations to himſelf, he did recite by his Bu that he having no Regard to the Election the ſaid *Nicholas* gave to him the ſaid Abbe and the Spiritualties and Temporalties b longing to the ſame, of his Spiritual Grac and at the Requeſt (as he feigned) of th King of *England*. This Bull was read an conſidered of in Counſel, that is, before a the Judges of *England*, and it was reſolve by them all that this Bull was againſt th Laws of *England*; and that the Abbot fo obtaining the ſame was fallen into the King Mercy; whereupon all his Poſſeſſions we ſeiſed into the King's Hands, as more large by the ſaid Caſe appeareth. 5 *Co. L Jure Regis Eccl.* 16. *b.* 17. *a.*

12. *Richardus Fermor* of *L.* was attaint Præmunire, and his Lands were forfeited Fee *imperpetuum*, and not only for Life; *ſic vide, that it is not only for Term of Lif as in Attaint; for the one is by Statute, an the other by the Common Law. Lit. Bro.* 5 *Co.* 242.

13. See the Statutes which inflict the Pu niſhment of *Præmunire*, *viz.* 2 *R.* 2. *c.* 1 3 *R.* 2. *c.* 3. 7 *R.* 2. *c.* 12. 24 *H.* 8. *c.* 1 25 *H.* 8. *c.* 19, 20. 1 *Eliz. c.* 1. 26 *H.* *c.* 15. 28 *H.* 8. *c.* 16. 1 & 2 *Ph.* & *Ma*

c.

c. 1. 8 *Eliz. c.* 1. 13 *Eliz. c.* 2, 8. 39 *E-*
liz. c. 11. 27 *Eliz.* 1. 3 *Inſt.* 127.

7. *The Heinouſneſs of the Offence, and the Puniſhments annexed thereunto.*

1. *Præmunire* is an Offence for which great Puniſhment is ordained by divers Statutes, *viz.* that he ſhall be out of the King's Protection, and impriſoned *ſans* Bail or Mainprize, till he have made Fine at the King's Will; and that his Lands and Goods ſhall be forfeited, if he come not in within two Months, and his Proviſors, Procurators, Attornies, Executors, Notaries, and Maintainers ſhall be puniſhed in the ſame Manner. *Terms de la Ley*, ſub Tit. *Præmunire.*

2. *Præmunire* worketh no Corruption of Blood, but a Forfeiture of Lands in Fee-ſimple. *Co. Lit.* 391. *a. Br. Abr. Præmunire* 19, 20.

3. Attainder in *Præmunire* worketh no Corruption of Blood, but maketh Forfeiture of Lands in Fee-ſimple; but not of Lands in Tail. *Co. Lit.* 391. *a. But for the Life of the Offender.*

4. The Forfeiture on *Præmunire* is of Lands for ever. *Bro. Abr. Præmunire* 19.

5. One attainted in *Præmunire* is diſabled to bring any Action; for he is *extra Legem poſitus*, and is accounted in Law *civiliter mortuus*. Co. Lit. 130. a.

6. Perſons attainted in *Præmunire* are diſabled to have any Action, or Remedy by the King's Law or Writ, *& leur Terres, Biens*

Biens & Chatteux forfeit au Roy, that
Lands in Fee, or for Life, or other whi
he could lawfully forfeit, not Eſtates
Tail; but this extends not to a Forfeitu
of Fairs, Markets, Rents-Charge, Rent
Seck, Warrens, Annuities, &c. 3 *Inſt.* 12

7. One attaint in *Præmunire* cannot ma
his Will. *Lord* Bacon's *Reading on the St*
tute of Uſes, *fo.* 2.

8. By Stat. 25 *E.* 3. it is provided, th
he who purchaſeth Proviſion to Abbies,
Priories, ſhall be out of the King's Prote
tion, and that a Man may do with him
with the Enemies of the King and
Realm, and that he who ſhall commit a
Thing againſt ſuch *Proviſors* in Body
Goods, or other Poſſeſſions ſhall be excuſe
againſt all People. 3 *Inſt.* 126.

9. Excommunication under the Pope
Bull is of no Force to diſable any Ma
within *England*, and the Judges ſaid, he wh
pleaded it was in a hard Caſe, if the Kin
would extend his Juſtice againſt him. 5 C
De Jure Regis Eccl. 15. *b.*

10. *Hill.* 4 *Jac.* —— *Lalor*, being a Na
tive of *Ireland*, had received his Orders b
fore at the Hands of one *Brady*, and th
Pope had given him the Title of Biſhop
Kilmore in *Ulſter*; his Credit was conſide
able in *Ireland*, and he had alſo made h
Name known in the Court of *Rome*, an
held Intelligence with the Cardinal, wh
was called Protector of *Ireland*; he after o
tained the Title of Vicar-General of th
See Apoſtolick within the Archbiſhoprick
Dublin, and the Biſhopricks of *Kildare* an
Fernes, which extended almoſt all over th

Province of *Lemſter*. This pretended Juriſdiction he exerciſed boldly and ſecurely many Years till the Proclamation was publiſhed, whereby all Jeſuits and Prieſts, ordained by foreign Authority, were commanded to depart out of the Kingdom by a certain Time prefixed; whereupon he began to lurk and hide, and to bear falſe Names; but however at laſt he was taken in *Dublin* and committed to Priſon; and on Examination he acknowledged himſelf a Prieſt, and ordained by a Popiſh titular Biſhop; that he had accepted of the Office of the Pope's Vicar General, and had exerciſed Juriſdiction as aforeſaid; and in ſundry other Points he maintained the Pope's Authority, only he ſaid he was of Opinion the Pope had no Power to excommunicate or depoſe his Majeſty, becauſe the King is not of the Pope's Religion. He was indicted upon Stat. 2 *Eliz.* made in *Ireland* againſt ſuch as ſhould wilfully and adviſedly maintain and uphold the Juriſdiction of any foreign Prince or Prelate, *&c.* and thereupon was arraigned, convicted and condemned; and after reſting two Terms in Priſon, he petitioned the Lord Deputy to be ſet at Liberty; whereupon his Lordſhip cauſed him to be examined by Sir *Oliver St. John* and others; at firſt, he anſwered indirectly and evaſively; but after he acknowledged and confeſſed, that he was not a lawful Vicar General, and that he could not in his Conſcience take that Office upon him; he acknowledged the King his lawful Chief, and ſupreme Governor in all Cauſes as well Eccleſiaſtical as Civil, and that he was bound in Conſcience

ſcience to obey him therein, and that neither the Pope, nor any other foreign Prelate, Prince, or Potentate, had any Powe to controul the King in any Cauſe Eccleſiaſtical or Civil within this Kingdom, or an of his Majeſty's Dominions; he alſo believe all Biſhops ordained and made by the King Authority within any of his Dominion were lawful Biſhops, and that none mad by the Pope or by any Authority derive from him within the King's Dominions ha any Power or Authority to impugn, diſan nul, or controul any Act done by any Bi ſhop made by his Majeſty's Authority a aforeſaid; he alſo profeſſed himſelf willin and ready to obey the King, as a good an obedient Subject ought, in all lawful Com mandments either concerning his Functio of Prieſthood, or any other Duty belongin to a good Subject. After this Confeſſion th State had no Deſign to proceed againſt hi ſeverely, either for his Contempt again the Proclamation, or Offence againſt th Law; but on being indulged more Liberty and his Friends having free Acceſs to him ſome of them told him what they had hear of his Confeſſion, he, *jeſuitically and wicked ly*, proteſted unto them, that he had onl acknowledged the King's Civil and Tempo ral Power, without any Confeſſion or Ac mittance of his Authority in Spiritua Cauſes. This being reported to my Lor Deputy by ſeveral Gentlemen, who be lieved what he ſaid, his Lordſhip though proper, that as he had incurred the Pai of *Præmunire*, by exerciſing Epiſcopal Ju riſdiction, as Vicar General to the Pop

that he ſhould be attainted of it, as well to make him an Example to others of his Profeſſion, as alſo that, at his Trial, a juſt Occaſion might be taken to publiſh the Confeſſion and Acknowledgment which he had ſo voluntarily made as aforeſaid, and ſigned and confirmed by Oath before the Lord Deputy and Council, who had alſo thereto ſubſcribed their Names as Witneſſes thereof; and hereupon an Indictment was framed *in Banco Regis ſur le Stat.* 16 *R.* 2. *c.* 5. on five Points. 1ſt, That he had received a Bull purchaſed at *Rome* touching the King's Crown and Dignity Royal, containing a Commiſſion from the Pope to *Brady* and *Magragth* to conſtitute a Vicar General for the See of *Rome*, by the Name of the See Apoſtolick in the ſeveral Dioceſes of *Dublin*, *Kildare*, and *Fernes* in *Ireland*. 2dly, That by Pretext thereof he was conſtituted Vicar General of the See of *Rome*, and took upon him that Title. 3dly, That he exerciſed Eccleſiaſtical Juriſdiction, as ſuch Vicar General, by inſtituting divers Perſons to Benefices with Cure of Souls, by granting Diſpenſations in Cauſes matrimonial by pronouncing Sentences between ſeveral married People, and doing all other Acts belonging to Epiſcopal Juriſdiction within the ſaid ſeveral Dioceſes againſt the King, his Crown, and Dignity Royal, and in Contempt of his Majeſty, and Diſinheriſon of his Crown, and contrary to the Form and Effect of the Statute, *&c.* The Priſoner pleaded Not guilty, and when Iſſue was tried, the Name and Reputation of the Man and Nature of the Cauſe drew all the prin-

cipal Gentlemen in the Town to hear it, when a ſubſtantial Jury of *Dublin* being ſworn for the Trial, after long and full Arguments *pro* and *con.* he was found guilty of the Contempts whereof he was indicted; whereupon the Solicitor General moved the Court to proceed to Judgment, and Sir *Dominick Sarsfield*, Knt. gave Judgment according to the Form of the Statute, whereupon the Indictment was framed. *Da. fo.* 83. *a.* to the End. *Vide tout le Caſe, Excellent Matter.*

11. 9 *E.* 4. 3. and *Fitzh. Nat. Brev. fo.* 44. *b.* H. It appeareth to have been often the Opinion of the King's Bench, that if one Spiritual Perſon ſueth another in the Court of *Rome* (or *hors de Realme*, as *Fitzh.* expreſſeth it) for a Matter Spiritual where he might have Remedy before his Ordinary, *quia trahit ipſum in placitum extra Regnum*, incurreth the Danger of a *Præmunire*, an heinous Offence, being *contra Ligeantiæ ſuæ Debitum, in Contemptum Dom. Regis, & contra Coronam & Dignitatem ſuas.* By which it appeareth how grievous an Offence it was againſt the King, his Crown and Dignity, if any Subject, tho' both Perſons and Cauſe were Spiritual, ſought for Juſtice out of the Realm, as tho' either there wanted Juriſdiction, or Juſtice was not executed in the Eccleſiaſtical Courts within the ſame, which as it hath been ſaid, was an high Offence *contra Regem, Coronam & Dignitatem ſuas.* 5 Co. De Jure Regis Eccl. 26. b.

C. *Where*

C. *Where theſe Courts are either Informal in their Proceedings, or they proceed againſt Law, or where is a Variance between the Two Laws, or where Matter Temporal is mix'd or falls in incidentally with Matter of Eccleſiaſtical Cognizance, or the Matter is of ſuch a Sort as they may not deal in, as being either prohibited them by Statute Law, or is otherwiſe cognizable at Law, or hath been there determined already.*

I. *For Want of Certainty or Form in their Proceedings below.*

II. *Where they would proceed againſt Law.* } 425.

III. *Where they refuſe to act according to Law.*

429. 1. *The Temporal Courts will do that which the Eccleſiaſtical Courts ought to do, but do not, or will compel them thereto.*

1. *General.*
2. *Or will ſend their Writs Mandatory to compel the Eccleſiaſtical Courts to do their Duty, and here of the* Mandamus.

1. *General.*
430 — 2. *Wherefore granted.*
431 — 3. *To whom directed.*
4. *The Return.*
5. *The Writ of Error on.*

432. IV. *Where the Eccleſiaſtical Courts refuſe ſuch Plea as would be good in the Temporal Courts.*

436. V. *Where Matter of Cuſtom or Preſcription comes in Queſtion.*

1. *The Difference between Cuſtom and Preſcription.*
437 — 2. *Where to be tried.*
449 — 3. *What a good Evidence thereof.*

VI. *Where*

VI. *Where they refuſe ſuch Evidence as would be good at Law.* 454.

1. *General.*
2. *Rules in.*

VII. *Where they refuſe a Copy of the Libel or Interrogatories.* 461.

1. *To be by Advice of, and ſigned by an Advocate.*
2. *When the ſame ſhould be delivered.* 462.
3. *What to be deemed a Delivery.*
4. *Whether their Proceedings may be ſtayed, and they puniſhed, and how, for ſuch Refuſal.* 463.

VIII. *Where the ~~two~~ Temporal & Spiritual Laws vary.* 465.

1. *The Temporal to prevail.*

IX. *Where Matters of Temporal Cognizance are mix'd or fall in incidentally with Matters of Eccleſiaſtical Cognizance.* 468.

X. *In Caſe where either theſe Courts are prohibited by Statute, or the Matters have been, or are, determinable in the Temporal Courts.* 473.

475. 1. *As the Matters wherein they deal are prohibited by Statutes.*

1. *Suing to the Court of* Rome, &c.

1. *Statutes concerning and the Constructions thereof.*

1. *General.*

487. 2. *Particular to the Word* Alibi.

491. 3. *Instances or particular Cases of Suits to* Rome.

494. 4. *Suits.*

1. *How prosecuted.*

495. 2. *How punished.*

498. 3. *The Defendant to be restrained by Writs Mandatory from defending there.*

499. 2. *For derogating from the Sovereignty, Authority, and Jurisdiction of the Superior Temporal Courts.*

500. 3. *Maintaining the Pope's Power.*

501. 4. *Maintaining Popish Seminaries.*

5. *Receiving Books against the Religion of the Church established.*

6. *Bringing in* Agnus Dei's, &c.

502. 7. *Refusing to elect or consecrate Bishops,* &c.

503. 8. *Exercising the Jurisdiction of a Suffragan, without Authority.*

9. *Intermeddling with Matters relating to religious Houses.*

10. *Main-*

10. *Maintaining the sham Right of the pretended Prince of* Wales.
11. *Refusing the Oaths, &c.* } 504.

1. *General.*
2. *Constructions on the several Statutes.* — 508.

12. *For holding Plea of a Matter cognizable at Law.* } 509.

2. *For holding Plea of Matters determinable in the Temporal Courts.*

1. *In Courts of Law.*
2. *In Courts of Equity.* } 512.

1. *At Law.*

1. *Of Chattels, Debts, Lay Fees, &c.*
2. *Rules.* — 510.
3. *Though* in Ordine ad Spiritualia. } — 518.
4. *Boundaries of Parishes, &c.* }
5. *Where the Matter hath been determined at Law.* 519.
6. *Where Suits pending both at Law and in the Spiritual Court at the same Time for the same Matter.* 521.
7. *Where the Party is sued in the Ecclesiastical Court for Acts done in the Temporal Courts.* 522.
8. *The Ecclesiastical Court may be restrained by the Temporal Courts, though the Courts so restraining them have no Jurisdiction themselves of the Thing in Question.*

8. Though the Court granting the Prohibition hath not Jurisdiction of the Matter in Suit, nor can determine the same. } 523.

523. — 1. *General.*

2. *Yet in ſome Caſes the Temporal Courts will allow theſe Courts to hold Juriſdiction of*

525. — *Matters of which they have not* in ſtricto Jure Cognizance *on Account of the Aptneſs of the Remedy, which the Eccleſiaſtical Courts in ſuch Caſes apply or give.*

527. { 9. *For holding Plea of Matters cognizable in any of the inferior Temporal Courts.*

1. *As Peculiars, and other like Juriſdictions.*

529. — { 2. *In Equity.*

1. *In General.*

2. *Where the Eccleſiaſtical Courts have not*

531. — *Juriſdiction, but the only Relief is in Equity.*

534. { 3. *Where Suits pending at the ſame Time, for the ſame Matter, both in Equity and in the Eccleſiaſtical Court.*

4. *Where the Eccleſiaſtical Courts have not Juriſdiction of the whole Matter, or cannot give ſuch full Relief, Direction and Order therein as Equity can.*

1. *In Caſes of Infants.*

535 { 2. *In Caſes of Guardians and Infants.*

1. *As to Matter of Intereſt-Money and giving Security.*

536 { 3. *In Caſes of Baron and Feme.*

1. *To compel an adequate Settlement on the Feme,* &c.

537 2. *Alimony.*

4 As

4. *As to the Perſonal Eſtate.*
1. *To go in Exoneration of the Real.* } 598.

I. *For Want of Certainty or Form in their Proceedings below.*

A Biſhop's Excommunication was pleaded in Bar, and the Certificate of the Biſhop of *Landaff* was ſhewn, without mentioning by what Biſhop he was excommunicated; and therefore the Certificate was reſolved vitious, and the Archbiſhop's Abſolution was ſhewn, but the Court thought it inſufficient; for it ought to be the ſame Biſhop, unleſs it had been by Appeal. *Mo. Pla.* 1070.

II. *Where they would proceed againſt Law.*

1. A Prohibition was granted againſt Church-wardens for ſuing in the Court Chriſtian, for finding meat and drink for them, and the Parſon going in Proceſſion, and alledged a Cuſtom, and by all the Court a Prohibition lies; for that it is againſt Law. *Mo.* 916. *Caſe* 301.

2. On a Suit to revoke an Adminiſtration, the Judge would have examined the Party upon Covenants, and what Lands he had by Deſcent;

Deſcent; wherefore a Prohibition was awar
ed. *Mo.* 906.

3. In a Cauſe of Incontinency, the Judg
would have examined the Party on Oat
whether he did the Fact or not, a Prohib
tion was awarded; becauſe he might n
himſelf *prodere* where his Diſgrace or Di
credit would enſue; otherwiſe it is in
Cauſe matrimonial, or teſtamentary. *M*
906.

4. If an Adminiſtration be granted to th
next of Blood, and upon this an Appeal
ſued to the Delegates, and there they in
tend to revoke the ſaid Sentence, and t
grant it to another, who is not ſo near
Blood by our Law; but is by the Eccleſia
ſtical Law, a Prohibition lies in ſuch Caſe
becauſe it being ordained by Statute, ough
to be interpreted according to our Law
Mich. 21 *Jac. B. R. Wingate* and *Fitch*
And a Prohibition, becauſe Adminiſtratio
was granted to a Brother of the Half-Blood
and on Appeal to the Delegates, they wer
inclined to repeal it, and to grant it to th
Brother of the whole Blood; and therefor
a Prohibition was granted to try their Law
upon it by our Law. *Ro. Abr. Prohibition*
303. *Caſe* 27.

5. If an Adminiſtration be granted to
Couſin of the Half-Blood, and hereupon
Suit is by another, who pretends himſelf
Couſin of the intire Blood, where his Fa
ther was a Baſtard by our Law, and an Ap
peal is to the Audience, and there they in
tend to repeal the firſt Adminiſtration, and
to grant it to the Son of the Baſtard; accord
ing to the Eccleſiaſtical Law; a Prohibition
lies;

; becauſe the Statute is to be interpreted cording to our Law. *Hill.* 22 *Jac. B. R.* rohibition granted. *Ro. Abr. Prohibition* 3. Caſes 28. *The two laſt Caſes are of hat Sort where I take it, the Eccleſiaſtical udges are bound in Conſcience to know, and determine according to the Temporal Laws; which are to ſuch Purpoſes the Eccleſiaſtical Laws of the Realm.*

6. A Man is not bound to anſwer on Oath Matters concerning his Faith; for here is a Statute by which he might be puniſhed, if he publiſhed any falſe Doctrine. *Mich.* 18 *Jac. Fenner's* Caſe. *Per Curiam. Ro. Abr. Prohibition* (T) *Caſe* 5.

7. If a Woman be ſued in the Eccleſiaſtical Court, for a Contract of Marriage, and ſhe enter into an Obligation to the Court with Condition not to marry, or cohabit in Fornication with any, *pendente lite*, ſhe may not after be examined on Oath, whether ſhe be a ſingle Woman; for it tends to a Forfeiture of her Obligation. *Hill.* 8 *Jac. Clifford* and *Huntley. Ro. Abr. Prohibition*, (T) *Caſe* 6.

8. Where is Matter of Common Law in a Caſe originally cognizable in the Eccleſiaſtical Court, the Judges there ought to take Advice of thoſe who are learned in the Common Law to direct them; but if they will judge contrary to the Common Law, a Prohibition lies after Sentence. *Mich.* 13 *Car.* B. R. *Pocklington* and Sir *St. John. Ro. Abr. Prohibition*, (U) *Caſe* 13. *Vide Doct. & Stud. lib.* 2. *c.* 25. *fo.* 221, 237, *&c.* 1 *Vent.* 313. *Show.* 158. 1 *Vent.* 291. *Doct. & Stud. fo.* 222. 1 *P. Will.* 12. *Vide antea*

their

their Judges bound to take Notice of the Com-
mon Law, per tout.

9. *Spendlowe*, Parſon of *Skiton* in *Norfolk*, ſues Sir *William Smith* of *Eſſex*, Executo of *Smith* the laſt Incumbent, for Dilapid tions, in the Arches, and (*inter alia*) ther was a Queſtion about a Leaſe for Year which was alledged to be taken by Sir *Wi liam* in his own Name, but covenouſly i Truſt for *Smith*, the Parſon; whereupo they would put Sir *William* to his Oath t anſwer concerning the Covin; wherefore Prohibition was granted, *quoad* examinin him upon Oath concerning the Covin, fo tho' the original Cauſe belongs to their Cog nizance; yet the Covin and Fraud is Crim nal, and the Avowing of it to be *bona fi* is puniſhable both in the Star-Chamber an by the Penal Law of fraudulent Gifts; an therefore is not to be extorted out of him ſelf by Oath, alſo the Expoſition of the Sta tute 13 *Eliz. cap.* 10. of Dilapidations, an what ſhall be Covin or not, within that Law reſt not in them to judge, but in the Court of Common Law. *Hob.* 84.

III. *Wher*

III. *Where they refuſe to act according to Law.*

1. *The Temporal Court will do that which the Eccleſiaſtical Courts ought to do, or compel them thereto.*

1. *General.*

IF any Man by Eccleſiaſtical Authority is impriſoned, on Complaint to the Temporal Courts, that he is impriſoned *ſans* Cauſe, the Temporal Courts will ſend to have the Body, and to be certified of the Cauſe, which if they will not do, then the Temporal Courts do, and ought, to deliver him; for where the Temporal Judges ſee not a juſt Cauſe of the Party's Impriſonment by the Eccleſiaſtical Courts, the Temporal Judges (as being bound by Oath) are to deliver him. 2 *Inſt.* 615, 616.

2. *Will ſend their Writs Mandatory to compel the Eccleſiaſtical Courts to do there Duty, and here, of the* Mandamus.

1. *General.*

HOLT Lord Ch. Juſt. If the Eccleſiaſtical Judge act contrary to Law, may not this Court oblige him to purſue the Law? Is there any Difference between granting a Prohibition to ſtop them going wrong,

wrong, and a *Mandamus* to guide th
Right? 1 *P. Will.* 47.

2. *Wherefore granted.*

1. If the Eccleſiaſtical Court admits
Will, and will not grant the Probate to t
Executor appointed by the Will, becau
he cannot give Security juſtly to adminiſt
a *Mandamus* ſhall go; for the Execut
hath a Temporal Right, and the Ordina
cannot put any other Terms upon the Ex
cutor than ſuch as are in the Will. 3
Gilb. 208. *for the Teſtator hath thought fit*
truſt him, and he is Executor by the Will, a
Appointment, of the Teſtator, and not by a
Act of the Ordinary, who is but, in ſuch Ca
as I take it, a meer miniſterial Officer and I
ſtrument of the Law to convey the Authority
the Executor to do the Will of his Teſtat
and not to perform the extra Will of the Or
nary; and therefore it was, as I conceive, n
long ago determined that where a Bankru
was made an Executor, the Ordinary could n
demand Security.

* 2. *Mich.* 7 *Geo.* 2. *in B. R. Anonymus.*

* My Lord Ch. Juſt. ſaid, that in Caſes o
Adminiſtration this Court would not inter
fere by granting their *Mandamus's*; bu
where the Party applying for Adminiſtratio
is intitled to it by ſome Act of Parliament
or where the Eccleſiaſtical Judge is unrea
ſonably Dilatory in his Proceedings. *Vid*
Lord *Suffolk's* Caſe the ſame Term.

* 3. *Mich.* 7 *Geo.* 2. *Banco Regis. Th*
King and *The Aldermen of London.*

Lee Juſt. ſaid, ſince my Lord *Holt*'s Time, *Mandamus*'s have been granted for Sextons and Clerks.

4. *Hill.* 3 *Geo.* 2. *Banco Regis.* *Juſtice* and *Jones.*

Page Juſt. obſerved, That a *Mandamus* had been to inforce the Probate of Wills, where the Eccleſiaſtical Courts inſiſted upon Caution, for that the Executor was a Bankrupt. *Vide* 3 *Inſt.* 121. *

3. *To whom directed.*

To both Judge and Party.

4. *The Return.*

Trin. 3 *Geo.* 2. *Banco Regis.* *Anonymus.* * Motion was to ſuperſede a Writ of *Mandamus*, requiring the Judge of the Prerogative Court to grant Adminiſtration; this Motion was founded on Affidavit that Adminiſtration was granted before the Writ taken out, to which the Court ſaid, this Matter muſt be returned.

5. *Writ of Error on.*

In the Caſe of a *Mandamus*, no Writ of * Error lieth, for a *Mandamus* gives the Party who uſes it, no better Right, than he had before, which ſtill remains examinable and triable in a proper Action. There being no Coſts, the Party who ſues the Writ of Error

ror can have no Benefit by it. See *The Ki* and *Herle* in the Houſe of Lords, 18 *Mar* 1725.

IV. *Where the Eccleſiaſtic Courts refuſe ſuch Plea would be good in the Tempor Courts.*

1. IF a Man ſue for a Legacy in the Spiritual Court againſt an Executor, an he plead that he hath not Aſſets, but pay Debts, if the Court diſallow of his Ple a Prohibition ſhall be granted. *Paſ.* 15 *Ja B. R. Ro. Abr.* 292. L. 8.

2. If a Parſon ſue for Tithes, and th Defendant plead an Arbitrament in Ba and it be refuſed in the Eccleſiaſtical Cour a Prohibition ſhall be granted. *Ro. Ab Prohibition* 302. *Caſe* 24. *Ro. Rep.* 12 *Jac*

3. The Executor of an Executor was ſue for Legacies, and pleaded *Nul* Aſſets, whic was refuſed by the Spiritual Court; an therefore a Prohibition. *Palm.* 422.

4. If Baron and Feme are divorced in th Eccleſiaſtical Court, for Adultery, *a Menſ & Thoro & mutua Cohabitatione*, and after th Wife ſues in the Eccleſiaſtical Court for Legacy given to her, and the Husband re leaſeth all Actions, and this Suit and all be longing to it, a Plea of this Releaſe is good and a Prohibition ſhall go, if they will no allow the Plea; for in ſuch Caſe the Lega cy is originally due to the Baron and Feme and the Suit there is for a real Intereſt; an therefore the Releaſe of the Husband wil

diſcharge it. 44 *Eliz. Stephens* and *Tott*, Ro. *Abr. Prohibition* 301. *Caſe* 11.

5. If a Parſon ſue for not ſetting out of Tithes according to the Statute 2 *E.* 6. and the Defendant ſays he ſet them out, which Plea is refuſed, becauſe it is not a ſufficient ſetting ſet, if the Parſon be not preſent) yet a Prohibition ſhall be granted; for that it is ſufficient by the Common Law, though the Parſon be not preſent. *Mich.* 15 *Jac. Ro. Abr. Prohibition* 302. *Caſe* 19. *This is another Caſe wherein they ought to know the Common Law.*

6. One Man ſues another in the Eccleſiaſtical Court for calling him Baſtard, and the Defendant pleads that he was born after Contract between his Father and Mother, but before Marriage, which Plea is refuſed, becauſe that they, by the Eccleſiaſtical Law, hold ſuch Iſſue legitimate, which by the Common Law is a Baſtard, a Prohibition ſhall go. *Hill.* 39 *Eliz. Ambler* and *Medcalfe. Ro. Abr. Prohibition, fo.* 302. Caſe 20. *In this Caſe alſo they were bound to know and judge according to the Common Law.*

7. If a Parſon ſues for Tithes againſt a Pariſhioner, and he pleads a Leaſe to him of his own Tithes by Deed, by Way of Diſcharge, and this Plea is refuſed, a Prohibition ſhall lie. *Mich.* 15 *Jac. Parſon Storie's* Caſe, *Ro. Abr. Prohibition, fo.* 302. *Caſe* 23.

8. If an Executor be ſued in the Eccleſiaſtical Court for a Legacy, and he there plead that there is an Obligation forfeited, which ought to be firſt ſatisfied, and this Plea is diſallowed, a Prohibition ſhall be

granted; for by the Common Law Deb ought to be ſatisfied before Legacies. *Mic* 11 *Jac. Ro. Abr. Prohibition* 302. Caſe 2 *Sure a Man is to be honeſt in paying his ju Debts, before he is generous; it would be ha to make a Man thus to ſin, as it were, in h Grave, by giving (tho' to Charity) what common Juſtice belongs to his Creditors.*

9. If an Executor be ſued in Court Chr ſtian for a Legacy, and the Executor plea *Plene adminiſtravit*, but ſays, he has ſom deſperate Debts on Obligations and Co tracts which he there offers the Plaintif and to make a Letter of Attorney to him t ſue in the Name of the Executor, and Cou Chriſtian will not allow this Plea, a Proh bition ſhall be granted. *Mich.* 3 *Jac. She ney* and *Herring*. Dubitatur *Ro. Abr. Proh bition, fo.* 303. *Caſe* 26.

10. A Man by his Will deviſed 20 *l.* t his Daughter, for which the Executor gav Bond for Payment according to the Will the Daughter married, the Husband ſued th Executor in the Spiritual Court, as for Legacy, and the Executor pleaded Payme according to the Bond; and becauſe the Ec cleſiaſtical Judge would not allow the Plea whereupon the Executor ſued, a Prohibitio on Surmiſe of this Matter; and by *Gaud Fenner*, and *Yelverton* Juſtices, the Surmi is good; for the Bond had extinguiſhed th Legacy and had made the 20 *l.* a Debt pro perly at Law, and not ſuable below. *Yelv* 39.

* 11. *Hill.* 4 *Geo.* 2. *B. R. Stephenſon* an *Hale.*

On Rule to ſhew Cauſe why a Prohibitio ſhould

ſhould not go to the Eccleſiaſtical Court in a Suit for Tithes, Mr. *Fazakerly* ſaid, it was true indeed the Defendant below had pleaded a *Modus*, but then by another Part of the Plea he had deſtroyed the Whole of it; for he has pleaded beſides, that the Land in Queſtion was in the Hands of the Monaſtery of and ſo diſcharged; and he ſaid it never was determined; but where the Pleas of a *Modus* was thus pleaded, the Eccleſiaſtical Court might reject the Plea. The Court ſaid, that, according to the Common Law, ſuch Pleas were not allowed, but they did not ſee why they ſhould not in the Eccleſiaſtical Courts, as they thought they would in Chancery and the Exchequer; and therefore there was no Reaſon to intend, That this Plea was rejected there for Form; accordingly the Rule was made abſolute. *See Caſe* Sharp *and* Lowther. Trin. 10 Geo. 2. *So that, as I take the Matter from this Caſe, the Eccleſiaſtical Courts are not only to take ſuch Plea for good, as would be ſo meerly at Law, but even though the Plea would not be a good Plea in any of the Courts at Law; yet if it be ſuch as would be good even in Equity, theſe inferior Courts are bound to take Notice what Equity would do in the Caſe, and are ſo to act and demean as Equity in ſuch Caſe would do.* *

12. *Trin.* 8 *Geo.* 2. *B. R. Barecroft* and *Price.* *

The Vicar inſtituted a Suit in Eccleſiaſtical Court, and libelled for Tithes of the Glebe Lands, as Vicar of the Pariſh of *Elam Com. Canc.* againſt the Defendant, as Leſſee of the Impropriator of that Pariſh, and to this Libel the Defendant pleaded,

that Tithes were never paid of theſe Lands to the Vicar, or his Predeceſſors, and the now Application for a Prohibition was upon Affidavit, that the Judge of the Eccleſiaſtical Court had determined not to allow this Plea, unleſs the Defendant would plead generally, that Tithes were never paid of theſe Lands; to ſhew which Plea ſufficient, Counſel cited *Lutw.* 1062. 3 *Cro.* 479, 578. 2 *Ro. Abr.* 335. My Lord Ch. Juſt. ſaid, he agreed, if this Demand of Tithes had been made by the Rector, the Plea had not been good; but as it was by the Vicar, who can claim but by Endowment, or Preſcription, he was of Opinion it was good, and accordingly Rule was to ſhew Cauſe. *So note the Difference.*

V. *Where Matter of Cuſtom or Preſcription comes in Queſtion.*

1. *The Difference between Cuſtom and Preſcription.*

1. CUſtom, *Conſuetudo, dicitur ab Uſu, & Uſus, hoc eſt ſæpe uti.* Mich. 8 H. 6. 4.

2. Uſage and Cuſtom are equivalent; *Quia Unum ſunt.* 8 H. 6. 4.

3. Cuſtom, *Conſuetudo*, hath the ſame Signification with us, as with the Civilians, being by both accounted Part of the Law. *Conſuetudo*, ſaith *Bracton*, *Quandoq; pro Lege ſervatur, &c. Lib.* 1. *cap.* 3. It is an unwritten Law or Right eſtabliſhed by long and immemorial Uſe, and the Conſent of our Anceſtors.

4. Cuſtom

4. Cuſtom differs from Preſcription; the former being common to many, and Preſcription only to this or that Perſon.

2. *Where to be tried.*

1. Preſcription may not be tried in the Eccleſiaſtical Court, but by Jury. *Ro. Abr. Prohibition*, F. 16.

2. If where a Preſcription is general for all the Inhabitants, and a Prohibition is granted for one who is ſued; if the *Parſon* ſue another upon the ſame Title, the firſt not being determined, an Attachment lies. *Mo. fo.* 599.

3. *Lane* ſued in Court Chriſtian for Tithes of *Wood* under twenty-one Years of Age, or Growth; the Defendant alledged that he had imployed the Wood in Hedge-poles, for the meliorating of the Coppices, and that there was no Uſage for Paying of Tithes of Hedge-poles, and upon this a Prohibition was granted. *Mo.* 917.

4. If a Parſon libel in the Spiritual Court for a *Modus Decimandi*, if the Defendant ſuggeſt that he hath miſtaken the *Modus*, and ſhews another *Modus*, by which his Inheritance ſhall be bound, and an Uſage for ten Years is a good Cuſtom by the Spiritual Law; and if this ſhould be ſuffered, they would defeat the Temporal Courts of their Juriſdiction. 14 *Jac. Goſlin* and *Harden*, adjudged. *Ro. Abr. Prohibition*, *fo.* 293. *Caſe* 9.

5. If the Church-wardens of the Pariſh of *Stephenage* Libel in the Eccleſiaſtical Court

againſt *J. S.* Farmer of the Farm called *D.* for Contribution to the Repairs of the Church, and alledge that Parcel of the Farm lies in *Stephenage* and Parcel in *Walkern*, another Pariſh, and alledge a Cuſtom that the Farmers of the ſaid Farm have uſed, Time whereof, *&c.* to contribute to the Reparations of the Church of *Stephenage*, for all the ſaid Farm; if the Defendant ſays, that Parcel of the Lands lie in *Walkern*, and that he and thoſe, *&c.* have uſed, Time whereof, *&c.* to contribute for it to the Church of *Walkern*, and not to *Stephenage*, and deny the Preſcription; it ſhall not be tried in the Eccleſiaſtical Court, but by the Common Law; and therefore a Prohibition lies; for they may not try the Cuſtom in the Eccleſiaſtical Court, by which the Inheritance is to be perpetually charged. Yet *note*, that it is but, in Effect, a Denial of the Preſcription. *Trin.* 16 *Jac. B. R.* The Churchwardens of *Stephenage* and *Green*. *Ro. Abr. Prohibition*, *fo.* 308. *Caſe* 20.

6. The Parſon had libelled in the Spiritual Court, againſt ſeveral Pariſhioners for Interruption in placing a Pariſh-Clerk, and upon Suggeſtion that the Pariſhioners by Preſcription, Time whereof, *&c.* uſed to elect the Clerk, Prohibition was granted, and ſo it had been granted before 19 *Jac.* in *Craſhmoe's* Caſe, Parſon of *White Chapel*, and in ſeveral other Caſes. *Palm.* 379.

7. *Prohibition*, the Plaintiff ſued the Defendant, for Tithes in Kind, of certain Paſtures in *N.* where he was Parſon, the Defendant to have a Prohibition, ſurmiſed, That he was an Inhabitant in *S.* and that, Time,

Time, &c. every Inhabitant there who had Paſture in *N.* had paid Tithes for the ſame to the Vicar of *S.* and that the Vicar of *S.* had paid to the Parſon of *N.* 2 *d.* for every Acre, held the Prohibition lay. *Cro. Eliz.* 136. *To Suggeſtions, ſee* Cro. Eliz. 188. Vent. 107, 120. 2 Inſt. 662. Mo. 573. 1 Lev. 253. Salk. 136. 6 Mod. 308.

8. *Pollexfen*, moved for a Prohibition on Denial of a Cuſtom, on a Libel againſt a Chapel of Eaſe for a third Part of Repairs of the Mother-Church, which was granted. 3 *Keb.* 729.

9. Prohibition to the Eccleſiaſtical Court of *Durham* was prayed, ſuggeſting that they had a parochial Chapelry within another Pariſh in *Northumberland*, and that the Inhabitants thereof, Time out of Mind, had a parochial Chapel and Divine Service and Sacraments, &c. and were exempt from Repairs, Bells, &c. of the Pariſh-Church, and in Conſideration that they were charged with the Repairs of, and had repaired, &c. their own Chapel; notwithſtanding which the Church-wardens of the Pariſh-Church ſued them for Repairs of the Pariſh-Church, and Bells, and a Prohibition was granted; and after a Conſultation was moved for; becauſe this Matter was pleaded, and Sentence given, and cited the Caſe of *Chapel-Brimage*, *Hob.* 66. where a Conſultation had been granted; whereto it was anſwered, that in the Caſe of *Chapel-Brimage*, Sepulture was reſerved to the Pariſh-Church, which was not here, and it was a Reſervation of ancient Right, and on Examination of the Court the Suggeſtion appeared untrue; and though

it was decreed there againſt the Plaintiff
the Prohibition upon Plea of Cuſtom; y
it was to try a Matter there *dehors* their J
riſdiction; for they may not try a Cuſto
their Law and ours differing upon the N
ture of Cuſtoms. *Lat.* 48. Cuſtom alledg
in the Eccleſiaſtical Court, if denied, a Pr
hibition ſhall go. Bounds of a Pariſh n
triable there. 3 *Cro.* 228. adj. and *Het.* 13
and 3 *Bulſt.* 241. Suit for a *Modus* the
and another *Modus* pleaded, Prohibitio
granted, the Court ruled the Prohibition
ſtand. 2 *Lev.* 102, 103. 2 *Ro.* 265. Vid
3 *Mod.* 264. and 2 *Ro.* 126.

10. The Court refuſed a Conſultatio
though the Prohibition was irregular; fo
that the Matter was upon a Cuſtom triabl
at Law; ſo that the Court Chriſtian wa
juſtly prohibited, though not in ſuch du
and preciſe Form as ought. *Yelv.* 129.

11. *Inter Scott* and *Wall*, Plaintiff had
Prohibition containing, for that where h
had twenty Acres of Wheat, and had ſe
out a tenth Part of it, the Defendant pre
tended a Cuſtom of Tithing, that th
Owner ſhould have forty-five Sheaves, an
the Parſon five, and ſo ſued for that, where
there was no ſuch Cuſtom; for the Court
ſaid, That the *Modus Decimandi* muſt be
ſued for in the Eccleſiaſtical Court, as well
as the very Tithes; and if it be allowed be-
tween the Parties, they ſhall proceed there,
but if the Cuſtom be denied, it muſt be
tried at Common Law, and if it be found
for the Cuſtom, then a Conſultation muſt
go; otherwiſe the Prohibition ſtandeth.
Hob. 247. *Ro. Abr. fo.* 307. *Caſe* 20. *So*
that

that the Eccleſiaſtical Court cannot find againſt the Cuſtom.

12. A Prohibition was prayed by *Grimſton* to the Spiritual Court for ſuing for Tithes of Lambs, ſurmiſing the Cuſtom to be, that if one hath Lambs under the Number of Seven, he ought to pay a Half-penny for every Lamb under that Number in Lieu of all Tithes of Lambs, and if he had but Seven, the Parſon ſhould have the ſeventh Lamb and ſhould pay 3 *d.* and if he had 8, he ſhould pay 2 *d.* and if he had ten, the Parſon ſhould have the Tenth, without paying any Thing. *Berkley* and *Jones* held, that the Canon Law is ſo, and is ſo received in the Spiritual Court, and it is ſurmiſed that the Spiritual Court allows of it; and therefore there needs not any Prohibition; but becauſe it was alledged that there was a Cuſtom, and the Parſon would ſtay until a Tenth, and would refuſe to accept according to the Cuſtom, and that in the Spiritual Court, this Surmiſe is not allowed; therefore *Bramſton* Lord Ch. Juſt. and *Crooke* conceived, that a Prohibition is grantable for that Cauſe, and *Jones* and *Berkley* agreed, that it ſhould be granted, and the Party might demur, if he pleaſed. Alſo for Tithe of Aftermowth, that there is a Cuſtom in Conſideration, that he ſhould make the firſt Tonſure in good and ſufficient Hay, and ſet it out in Cocks ſufficiently dried, and ready to carry away, that he ſhould be diſcharged from the Payment of Tithes of the Aftermowths, and that was held a good and ſufficient Suggeſtion by Reaſon of the Coſts he beſtowed in making of it into perfect Hay,

and

and upon a Surmiſe made that he was ſue for Tithes of Bees, That in Conſideratio he paid Honey and Wax, and was at th Charge of Hives and Maintenance of ther in Winter, he ſhould be diſcharged from th Tithes of the Bees themſelves, and upo theſe Surmiſes a Prohibition was granted being one of the firſt Caſes moved afte *Bramſton* was made Chief Juſt. *Cro. Ca* 403, 404.

13. *Peter Baker*, Vicar of *S. P.* libelled i the Spiritual Court for Tithe Lambs againſ *Cocker*, and laid that the Cuſtom was, tha all Lambs engendered, fallen and bred up on any one Tenement or Living in that Pa riſh, though they belonged to ſeveral Own ers, had been reckoned together, as though but one Man's, and the Tenths or Tithe Lambs of them ſo counted together hav been paid for Tithes; whereupon *Hende* prayed a Prohibition; for that all Cuſtom againſt common Right are triable at Law which was granted; and the Court was fur ther of Opinion, that this pretended Cu ſtom was unreaſonable and againſt Law; for by this Means it might follow, that ſome one might have but one Lamb, and tha might be taken for Tithes, and he who had more ſhould pay nothing at all. *Hob.* 329.

14. If the Church-wardens of a Church ſue in the Eccleſiaſtical Court *J. S.* for tha he and all thoſe who have been ſeiſed o ſuch an Houſe, *&c.* at the Perambulation of the Pariſhioners of the Pariſh, *&c.* have uſed to find Refreſhment, *ſc.* Bread, and Services, and to reſt themſelves there, a Pro hibition ſhall be granted; for that they claim it

in Nature of a Corody, and if that ſhould ſuffered, great Inconvenience would fol-w, &c. Ro. Abr. Prohibition, fo. 287. ſe 49.

15. If the Pariſhioners have uſed, Time hereof, &c. to elect one Church-warden, d the Vicar another, and then a Canon made that the Vicar ſhall elect both, and does ſo accordingly, and the Pariſhioners ect one according to their Cuſtom, and the rdinary diſallow him, and eſtabliſh the o appointed by the Vicar, a Prohibition ll be granted. Paſ. 5 Jac. . The Pa-ſhioners of Rovelden in Kent, adjudged. Abr. Prohibition, fo. 287. Caſe 50, 51.

16. Church-wardens ſue one whoſe Lands contiguous to the Church-yard, that he d all thoſe, &c. uſed to repair all the ences, &c. a Prohibition lies. Ro. Abr. hibition, fo. 287. Caſe 52.

17. Evelin being elected by the Pariſhio-ers of St. Thomas, to be Church-warden ere with another, the Parſon pretending, at by the Canons he had the Nomination one, named Hill, to be Church-warden, d procured Dr. Clarke, the Official, to ear in the ſaid Hill, and to refuſe Evelin; hereupon the Pariſhioners ſurmiſing that ey had a Cuſtom within the Pariſh, Time hereof, &c. to elect both the Church-war-ens, and that the Canon cannot take away eir Cuſtom, prayed a Writ to Dr. Clarke admit the Church-warden elected by them, d to ſwear him in, and to amove the hurch-warden elected by the Parſon; and Precedent was ſhewn in Jac. where ſuch Writ was granted; and it was ſaid, there were

were divers other the like Precedents. An
becauſe the Church-wardens in *London* ar
for the greateſt Part, Corporations, an
Owners of Lands to them deviſed, the Wr
was granted. And the Court being inform
ed, that the ſaid *Hill*, elected Church-wa
den by the Parſon, ſued the ſaid *Eveli*
elected by the Pariſh, in the Eccleſiaſtic
Court, granted a Prohibition to the Inte
it might be tried, whether there was ſuc
Cuſtom or not. *Cro. Car.* 551, 552.

18. *Paſ.* 8 *Geo.* 2. *B. R. Pughe* again
Creſwell and *Highwick*.

Dr. *Andrews*, came now upon a Rule
ſhew Cauſe why a Prohibition ſhould not
granted in a Suit inſtituted in the Eccleſiaſtic
Court by the Defendants, as Church-wa
dens of the Pariſh of *St. Mary Rotherhith*, a
ſaid, that the Defendants had libelled belo
againſt the now Plaintiff for erecting a Kil
houſe adjoining to the Church-yard, the Ev
whereof dropped into the Church-yard; a
he opened the Libel further, to ſet for
that the now Plaintiff had claimed a W
over the Church-yard, without any Auth
rity, and alſo that he had killed Hogs the
to the Profanation of the Church-yard, t
now Plaintiff had pleaded below, that, as
the Eves-dropping, this Kiln-houſe was fo
merly four Tenements belonging to o
Geo. Barret, and that *George* and thoſe, &
had, Time out of Mind, enjoyed a Right
having the Eves of thoſe Houſes dripping i
to the Church-yard. He had alſo made t
ſame Plea as to the Way, on both whi
Iſſue was joined. And as to killing t
Hogs, he denied it: As to the Suggeſtion

was, that the Trial of all cuſtomary Rights belonged to the Courts of Common Law; upon this State of the Caſe the Doctor ſubmitted it, that the Rule ought to be diſcharged. He ſaid, he believed, it would not be contended, but that the Eccleſiaſtical Courts had a Juriſdiction to puniſh Indecencies in Church-yards; this he ſaid appeared from *Bracton*, *lib.* 4. *c.* 28. Nº 1. and is fully confirmed by the 13 *E.* 1. *Stat.* 4. *de Circumſpecte Agatis*, and if this was ſo, he then ſubmitted it, that the Eccleſiaſtical Court ſhould be admitted to try the Right to the Eves-dripping, as incidental to their general Juriſdiction; and of the like Opinion, he ſaid, was the Court of Exchequer, in the Caſe of *Cheetham* and *Cloves*, *Mich.* 1732. He alſo ſaid, there was ſtill a ſtronger Reaſon, that the Eccleſiaſtical Court ſhould try the Right to the Way in and through the Church-yard; becauſe they have even an original Juriſdiction to hold Plea in a Suit for Diſturbance in a Way which a Parſon has to go to gather his Tithes, as appears by *Fitzh. Nat. Brev.* 51. and laſtly, he ſubmitted it, That undoubtedly the Suit muſt go for Killing the Hogs in the Church-yard; for as to that, there is nothing in the Suggeſtion which any Ways related to it, and the Party has only denied the Fact. Mr. *Filmer*, on the ſame Side, ſubmitted it, that the Rule for the Prohibition ought to be diſcharged in the Whole; by Reaſon that there was no Affidavit produced at the Time the Rule was made, that the Plea of the Cuſtom was diſallowed. Serj. *Wright*, now Mr. *Juſtice*, and Mr. *Marſhe*,

Marſhe, on the other Side, argued, that t
Freehold of the Church-yard was in t
Parſon, and that therefore he was the prop
Perſon to bring an Action for killing t
Hogs there, *and, as I conceive, for the Tr
paſs from the Eves, for the ſame Reaſon*, a
ſaid, that they therefore did not know th
the Church-wardens could inſtitute any Su
at all for that. They agreed indeed, th
there was nothing in the Suggeſtion; a
therefore if the Eccleſiaſtical Court ſhou
proceed, as to that Part of the Libel, th
muſt deſire to amend the Suggeſtion in o
der to have the Prohibition as to that to
Then, as to what was contained in the Su
geſtion, they ſubmitted it, that the Prohib
tion muſt clearly go, as to that; for it is a
eſtabliſhed Rule, That a Cuſtom they ca
not try, and there was no Occaſion, in th
Caſe, for an Affidavit, that the Cuſtom w
not allowed; becauſe it appears by the ver
Proceedings, that Iſſue is actually joined o
it, and for Authority they cited *Car.* 15
2 *Ro. Abr.* 265, 287. The Court were
Opinion, That as to what was contained i
the Suggeſtion, the Prohibition ſhould go
and accordingly the Rule was made abſolut
but delivered no Opinion, as to the Reſt.

* 19. *Paſ.* 8 *Geo.* 2. *Banco Regis*, *Burton* an
Weldon.

This was upon a Rule to ſhew Cauſe wh
a Prohibition ſhould not go to the Conſiſto
ry Court of *Litchfield* in a Suit there for
Rate for the Repairs of the Church of *Man
field.* Mr. *Abney*, now Mr. *Baron*, ſaid
that the Motion for a Prohibition wa
founded upon a ſuppoſed Cuſtom, whic
th

the Defendant below had pleaded, ſetting forth, that there were four Vills in *Manſfield*, namely *Atherſton*, *Mansfield*, *Hartſel*, and *Oldbury*, and that the Cuſtom was, That *Atherſton* ſhould pay two Thirds of the whole Rate, and that the Three other Vills ſhould pay but one Third. To this Plea the Plaintiff had replied, that true it was, that there was ſuch an Uſage, but that it was abſolutely void; for that the Lands in the three Vills are of greater Extent, and of greater Value on Account of the Incloſures, which have been made, than the Lands in *Atherſton*, upon which Mr. *Abney* ſubmitted it, That the Rate ought to be diſcharged; he owned, that where a Cuſtom is denied, a Prohibition ſhall go for Want of Trial; but in the preſent Caſe, the Cuſtom is confeſſed and avoided, 'tis admitted that there is ſuch an one; but ſhewed that it is unreaſonable; and therefore, if this had been the Caſe even of a *Modus*, he ſubmitted it, that the Eccleſiaſtical Court ſhould have been admitted to proceed, and the preſent Caſe, he ſubmitted it, was much ſtronger; becauſe the Suit below is for a Church-Rate, and the Eccleſiaſtical Court has a greater Latitude allowed them, in thoſe Caſes, than in any other, and for this Purpoſe cited the Caſe *Goodfee* and *Foulden*, *Mich.* 1710. where the Suit was for a Rate for building a new Gallery, and though it was doubted, whether a Gallery was not only an Ornament to the Church; yet the Suit was allowed to proceed. So in the Caſe of *Howe* and *Chidmore*, *Mich.* 1. of his preſent Majeſty; there was a Suit for a Rate for the Church of *St. Martin in the Fields*, the

De-

Defendant pleaded he had only a Shop in the Change, and that he was not rateable but notwithſtanding this, the Prohibition was refuſed, and he further cited 3 *Cro.* 659 and *Poph.* 197. Mr. , on the ſame Side, ſaid, that the Cuſtom was abſolutely unequal and void, and wherever ſuch Cuſtom is ſet forth, it is the ſame as if no Cuſtom had been ſet forth at all, for which Purpoſe he cited *He.* 203. *Lat.* 217. and *Lev.* 116. My Lord Ch. Juſt. ſaid, that where-ever a Cuſtom does clearly appear to be void upon the Face of it, the Court indeed will not grant a Prohibition; but in the preſent Caſe the only Colour of its being void ariſeth from an Allegation of the Plaintiff himſelf, That the Lands in three Vills are of greater Value than the Lands in *Atherſton*, and that too only by the Incloſures; for which Reaſon his Lordſhip ſaid he thought the Prohibition clearly ought to go. His Lordſhip alſo ſaid, That Queſtion about the Validity of a Cuſtom belong meerly, and only to the Common Law to determine, as well as Queſtions of the Truth of them, in Point of Fact, belong to a Jury, and that he ſaid was the Reaſon That where a *Modus* is pleaded in the Eccleſiaſtical Court in a Suit for Tithes, and the *Modus* admitted, the Eccleſiaſtical Court can Decree for the *Modus* only. The Reſt of the Court were of the ſame Opinion and accordingly the Rule was made abſolute.

* *Hill.* 9 *Geo.* 2. *B. R. Anonymus.*

20. On a Rule to ſhew Cauſe why a Prohibition ſhould not be granted to the Eccleſiaſtical Court, Mr. *Filmer* obſerved, that

was a Suit for Tithes of the Agiſtment of unprofitable Cattle brought by the Vicar, whereto the Defendant had pleaded a *Modus* for to pay 15 *s.* to the Impropriator, in Lieu of all Tithes from thoſe Lands, and he ſubmitted it, that in this Matter the Eccleſiaſtical Court might well proceed to Trial, and to that Purpoſe he cited *Taylor* and *Dicken*'s Caſe, *Paſ.* 4 *Geo.* 1. which was a Suit by a Vicar againſt the Leſſee of the Rector for Tithes of Turnips, the Defendant pleaded, that they belonged to the Rector and not to the Plaintiff, as Vicar; whereupon was a Rule to ſhew Cauſe why a Prohibition ſhould not go, but on Argument, the Rule was diſcharged; he alſo cited 2 *Ro. Abr.* 313. 2 *Bulſt.* 157. Mr. *Deniſon*, on the other Side, denied the Caſe in *Bulſtrode* to be Law, and inſiſted, as this was a Plea of a *Modus*, the Eccleſiaſtical Court had no Juriſdiction, and the Court being of the ſame Opinion, the Rule was made abſolute.

Vide poſtea, what a good Evidence, of a Cuſtom, or Preſcription.

3. *What a good Evidence thereof.*

AFter *Mich. Term.* 10 *Geo. in Canc. Cliſton* and *Orchard.*

1. This was a Bill brought by a Pariſhioner of *H.* in *Com. Devon*', and ſets forth a *Modus* of 4 *d.* an Acre, in Lieu of all Tithes of Hay of the Lands in Queſtion, and of 2 *d. per Annum* in Lieu of Tithe-Milk of every Cow, and Depaſturage of ſuch Milch-

Cow, and of 1 *d. per Annum* for every dry Cow or Heifer, and 2 *d.* a Year for every Sheep and Lamb, and for every Colt 1 *d. per Annum*; and the Bill further set forth, that there had been an ancient Composition of 3 *l. per Annum* for all the Tithes due for these Lands, and also that they were Part of the Chauntery of *T.* The Answer admitted there had been such Composition for many Years, but that it continued always renewable, and that the Time for doing it was now expired, and denied that the Defendant knew of any such *Modus*, as the Bill charged, and that these Lands were exempted. The Plaintiff had also filed a supplemental Bill, that a Half-penny was also due for these Lands in Lieu of all Tithes of Wood growing upon the Premisses and spent in the House, and also a Garden-penny due from these Lands in Lieu of all Garden-stuff growing in the Garden and spent in the House, and these Bills sought to establish these several *Modus's*, and for an Injunction to stay Proceedings in the Ecclesiastical Court on a Suit there depending for Tithes in Kind by the Defendant against the now Plaintiff; upon the Hearing this Cause a Book was produced as Evidence by the Plaintiff, though indeed this Book was imperfect, wanting the Beginning to the 45th Page, and contained in what was left but about forty Pages; but to induce the Court to allow this Book to be read, this Account was given of it, (*viz.*) one sworn That *John Randal*, late of that Parish, was dead, but that he heard him declare that this Book was delivered to him about three Years

Years ago by one Mrs. *Taylor*, Daughter of Mrs. *Saunders*, formerly Rector of this Pariſh, and that *Randal* told him, he had compared the Hand-writing of that Book with the Rate-Book of the ſame Pariſh, and that he had ſeen the Name, *Humphry Saunders*, in the Rate-Book, and believed that the Writing contained in the Book delivered to him by Mrs. *Taylor* was Mr. *Saunders*'s Hand-writing. This Book purported to contain an Account of ſeveral *Modus's* of this Pariſh, among which were ſome of the *Modus's* now in Queſtion. It began with an Account from the Year 1643, and ended *anno* 1654, and *Humphrey Saunders* died *anno* 1670. My Lord Chancellor, on looking into the Book, was of Opinion, That ſeveral Parts of it were written by different Hands, and that the Name, *Humphry Saunders*, did not always appear to be wrote in the ſame Manner. The Attorney General argued, the Book ought not to be read in Evidence, and inſiſted, that no Book of this Sort ought to be read as ſuch, unleſs theſe two Things were firſt previouſly proved, namely, firſt, that it is the Party's Hand. 2dly, That the Book be found among the Party's Papers, and faithfully delivered down, and he ſubmitted it, both theſe were wanting in the preſent Caſe; and as to the firſt of theſe, he apprehended it would have been proper to have had the Book of Rates here, that the Court might judge whether the Opinion above founded upon the Compariſon of Hands was juſt; as to the ſecond, he ſaid, it did not appear that the Book came from the Father to the Daughter. My Lord Chan-

cellor was of Opinion, if the Book of Rates had been in the Plaintiff's Power, it ought to have been produced, but his Lordſhip ſaid, that it being of a publick Nature, that was not in the Plaintiff's Power; and his Lordſhip further ſaid, that as to the Objection he himſelf had made, it aroſe from the Reading it, and perhaps the Meaning of the Witneſs was, That the Name, *Humphry Saunders*, was his Hand-writing; for which Reaſon his Lordſhip declared he was of Opinion, That conſidering the Circumſtances of the Caſe there was ſufficient Evidence of the Hand-writing; and to the ſecond Objection his Lordſhip ſaid, very little Evidence would ſerve, conſidering the Party himſelf has been ſixty-ſix Years dead; and his Lordſhip was further of Opinion, that there was reaſonable Evidence of its coming from him, as this Caſe was; for which Reaſon his Lordſhip ordered the Book to be read, and on Reading it appeared the Entries were pretty uniform of the Payment of 2 *d.* a Year for Milk, and 1 *d.* a Year for every dry Cow and Heifer, and alſo that much the greater Number of Inſtances were of due and regular Payment of 4 *d.* a Year for every Acre of Hay; though as to that, there ſeemed to be ſome Incertainties. There alſo were ſeveral Depoſitions of ancient Witneſſes, who lived in the Pariſh, and who concurred in their Evidence, that they had heard their Fathers, *&c.* ſay, they believed it to be true, there were ſuch *Modus's* as have been mentioned. But from the Death of *Saunders*, theſe *Modus's* had not been paid, neither was there ever Tithes paid of

Milk

Milk or Hay in Kind, ſave once it was paid of Milk, on the now Defendant's inſiſting on the Tithes in Kind of Milk; whereupon it was told him, ſince he inſiſted on it in Kind, it ſhould be left for him in the Field where milked, and which was accordingly done; but that only for that ſingle Time, and no more. The Hearth-penny and Garden-penny were admitted; but no Evidence at all was given of the other *Modus's*, nor of there being an Exemption. Mr. Attorney General obſerved, That if there had been any *Modus's* they were deſtroyed by the Compoſition, for ſixty-ſix Years laſt paſt, as in ſeveral of them he argued they were, without the leaſt Pretence, and he ſaid, Bills of this Sort, in this Court, were by no Means uſual, and conſidering that there was a former Suit relating to this Matter, pending in the Exchequer, he ſubmitted it, the Bill ought to be diſmiſſed without Coſts. My Lord Chancellor ſaid it was true indeed that Bills of this Sort were not very frequent in this Court; but when a Suit for Tithes is inſtituted below, the Party has his Election to apply for a Prohibition, or file a Bill of the Nature with the preſent, and his Lordſhip ſaid, had the Plaintiff applied for a Prohibition it had gone in Courſe, in order to have tried the *Modus*; and he thought it reaſonable in the preſent Caſe to direct an Iſſue to try the three *Modus's* of 2*d.* a Year for Milk of every Milch-Cow, (not indeed for the Depaſturage, for of ſuch Cow nothing is due for the Depaſturage) 1*d.* for every dry Cow, or Heifer, and 4*d.* for every Acre of Hay; for his Lordſhip

obſerved from the Book produced, there was ſtrong Evidence of it, and though there has been a Compoſition, as above, yet his Lordſhip declared, That would not take away the Right of the *Modus's*; he decreed likewiſe both the Hearth-penny and Garden-penny, and of the Plaintiff's Payment thereof, ordered the Defendant to be injoined from Proceeding againſt the Plaintiff for Tithes in Kind of theſe Matters.

VI. *Where they refuſe ſuch Evividence as would be good at Law.*

1. *General to.*

1. THings which come in Abridgment of the Common Law, ſhall not be favoured, in Conſtruction, but be taken ſtrictly, and Revocation being a Thing collateral to the Will, and meerly at Law, is proper to be proved at the Common Law, beſides in the Principal Caſe, the Proof of the Revocation was only by one Witneſs which would not be ſufficient in Court Chriſtian, and if Court Chriſtian will not allow ſuch Proof as Common Law doth, a Prohibition ſhall be granted. *Telv.* 92, 93. *Vide Stat.* Frauds.

2. The Suit was for Tithe Pigeons, the Defendant in Court Chriſtian pleaded Payment, and offered to prove it by one Witneſs, and they refuſed to admit thereof, without two Witneſſes; whereupon the Plaintiff in Prohibition applied for the Prohibition,

hibition, and had it; for it would be a great Inconvenience to bring two *Witneſſes to prove* Payment of every Sort of Tithes. *Cro. Eliz.* 666. (20.)

3. *Cur'*, We do here try Fully adminiſter'd, or not, by a Jury, Court Chriſtian tries it *per Teſtes*, and they have Cognizance of this; but if they refuſe ſuch Proof for full Adminiſtration for Diſcharge of the Party, as is allowable at Law, then a Prohibition ſhall go. 3 *Bulſt.* 315.

4. In a Suit for a Legacy the Defendant pleads a Releaſe, and becauſe the Judge would not allow it, he brought a Prohibition and ſuggeſted nothing, but that the Judge would not admit the Releaſe, and did rely on the Manner of Proof there, and therefore a Conſultation was granted; for that the Court might try the Releaſe, and for Refuſal of the Releaſe by the Judge ſimply, the Party is not grieved in any Temporal Kind, but may be relieved by Appeal; but if he had expreſſed his Grief for rejecting ſuch Proof as the Common Law allows, then *ſtet Prohibitio, quod nota*, ſaith the Reporter. *Yelv.* 93.

5. *Elizabeth* the Wife of *Wats* libels againſt *Conningsby*, Executrix of the Executor of *Henry Conningsby* for a Legacy, the Defendant pleads a Releaſe of *Watts*, the Huſband, after Marriage, and there were two Witneſſes, but both dead, and therefore not allowed; whereupon a Prohibition went containing this Averment, that the Witneſſes were dead, and that ſhe offered to prove, by Witneſſes, the dead Witneſſes Hands, and that *Watts*, the Husband, confeſſed he ſub-

ſcribed the Releaſe. *Hob.* 247, 188. *Hutt.* 22.

6. By *Yelverton* Juſt. If the Eccleſiaſtical Judge will not allow, ſuch Proof as the Common Law allows a Prohibition ſhall go, and that though the Common Law cannot determine the Thing demanded; yet it may inhibit the Judge till he ſubmit himſelf to the Allowance of ſuch Proof as the Common Law admitteth of. *Yelv.* 92, 93. *Fi. Ley* 28.

7. Tithes are of Eccleſiaſtical Cognizance, now if a Libel ſhould be brought for Subtraction of Tithes, and the Defendant proves by one Witneſs that he ſet them out from the nine Parts, though the Parſon had not any Notice of it (which he is not to have at Common Law, though it is otherwiſe by the Eccleſiaſtical Law,) That Court muſt allow this Proof; otherwiſe a Prohibition muſt go. 3 *Mod.* 268.

8. If any collateral Matter doth ariſe concerning the Revocation of a Will, or Payment of a Legacy, if the Proof be by one Witneſs they ought to allow it; ſo in Caſe of Subſtraction of Tithes, *&c.* 3 *Mod.* 286.

9. Where the Spiritual Court refuſes to admit ſuch Proof which is allowed at Common Law, no Conſultation ſhall go; if the Law ſhould be otherwiſe, it would be inconvenient for all Executors and Adminiſtrators; for if they ſhould be compelled to prove Payment of Debts by two Witneſſes, they might often fail of that Proof, and ſo pay the Money twice. 3 *Mod.* 286. *Doct. & Stud.*

10. *Dolben*

10. *Dolben* Juſt. cited Caſe *Richardſon* and *Desborow*, *in Banco Regis*, *Hill.* 1675. which was a Deviſe of a Legacy of 100 *l.* and the Executor was ſued thereupon, who pleaded, his Teſtator owed another Perſon the like Sum on Bond which having paid he had not Aſſets *ultra*, and upon Proof in the Spiritual Court it appeared there was but one Witneſs to the Bond, which not being a good Proof of it in their Law, there was a Sentence for the Payment of the Legacy, and afterwards a Prohibition was granted upon the Suggeſtion of this Matter. 1 *Vent.* 281. 3 *Mod.* 286.

11. One makes a Will and gives a Legacy, and after revokes it and dies Inteſtate, and *J. D.* adminiſters, and the Legatee ſues for it in the Eccleſiaſtical Court, and the Adminiſtrator pleads the Revocation, and offers to prove it by one Witneſs, which is refuſed; Prohibition granted. *Trin.* 14 *Jac.* *Brown* and *Wentworth*, *Ro. Abr. Prohibition* 300. *Caſe* 6.

12. If one ſue in the Eccleſiaſtical Court for Subtraction of Tithes, if the Defendant plead, that he hath ſet them out, and they will not allow the Proof there, by one Witneſs, a Prohibition lies. *Mich.* 17 *Jac.* *Downes* and *Deveniſh*, *Ro. Abr. Prohibition* 300. *Caſe* 9.

13. If one be ſued upon a *Modus Decimandi* in the Spiritual Court, and the Defendant ſaith, that the *Modus* is other than the Plaintiff hath alledged, and they refuſe to accept his Proof of this *Modus*, he offering to prove it by one Witneſs, which is not ſufficient Teſtimony by the Spiritual Law,

Law, a Prohibition lies. 14 *Jac. Goſlin* and *Harden*, *Ro. Abr. Prohibition*, *fo.* 301. *Caſe* 14, 15.

14. A Suit is for a Legacy in the Spiritual Court, and the Defendant pleads a Releaſe in Bar and offers to prove it by one Witneſs, if they refuſe it, a Prohibition lieth; becauſe it is good Proof by our Law. *Mich.* 15 *Jac. Pecher* and *Well*, *Ro. Abr. fo.* 301, 302. *Caſe* 6. See *Hob.* 255. So when a Releaſe is pleaded in Bar of a Legacy, if they will not allow it in the Eccleſiaſtical Court; for that the Witneſſes are dead, neither will allow any Proof of the Deed by Circumſtances, as by comparing of the Hands of the Witneſſes, *&c.* a Prohibition ſhall be granted. *Mich.* 16 *Jac. Watts* and *Fry* and *Sir John Conningsby*, *Ro. Abr. Prohibition* 302. *Caſe* 17. *Vide Hob.* 312.

15. By *Tanfield*, in the Caſe of *Caton* and *Hill.* 30 *Eliz.* It was reſolved, That if in the Spiritual Court, one plead a Releaſe in Bar of a Legacy, and offer to prove it by a ſingle Witneſs, and the Spiritual Judge refuſe to accept it, or diſallow it, That a Prohibition lieth upon Surmiſe thereof. *Mo. fo.* 413.

16. Reſolved a Prohibition is grantable after Sentence in Court Chriſtian for a Legacy where a Releaſe was pleaded, and proved by one Witneſs, and diſallowed by Court Chriſtian for Want of another. *Mo.* 907, 909.

17. *Prohibition*, and ſurmiſed that Defendant ſued him, being an Executor, in the Spiritual Court for a Legacy, whereas he had

had a Releaſe, but had only one Witneſs to prove it. A Conſultation was granted: But if he had ſurmiſed that he had pleaded the Releaſe below and produced his Witneſs; and that they would not allow it; becauſe he had not two Witneſſes, this had been a good Surmiſe: And it was ſaid, that the Plaintiff was at no Miſchief; for he may have a Prohibition after Sentence given in that Court. *Cro. Eliz.* 88. *Vide* 1 *Vern.* 291. *Show.* 88, 158, 173. *Poph.* 59. *Doct. & Stud. lib.* 2. *c.* 25, 28, 29. *Lat.* 117. *Gilb.* 207, 208. *Salk.* 519. *Raym.* 123, 189, 219. *Telv.* 93.

18. Prohibition to the Spiritual Court, wherein the Plaintiff declares to this Effect, That one *John Friend* by his Laſt Will bequeathed 10 *l.* to *Mary Friend*, and made the Wife of *Shotter* Executrix; the Plaintiff *Shotter* paid the Legacy to *Mary Friend*, who after dying inteſtate, the Defendant, as Adminiſtrator, libelled in the Court Chriſtian againſt the Plaintiff for this 10 *l.* to which he alledged in that Court, by Way of Plea, that he had paid this Legacy to *Mary* in her Life-time, and which he offered to prove by one credible Witneſs; but that Court rejected his Plea; becauſe one Witneſs is not ſufficient with them; but the Plaintiff had Judgment for a Prohibition. *Carth.* 142, 143, 144. *Salk.* 547, 1. *Show.* 158, 172. *le meſme Caſe. Hob.* 188, 247.

19. A Prohibition was prayed to the Eccleſiaſtical Court, where the Suit was for a Legacy, and the Defendant pleaded there was nothing remaining in his Hands to pay it, and that he had fully adminiſtered, and produced

produced but one Witneſs to prove it; Sen
tence was given againſt him; whereupon h
appealed and prayed a Prohibition; becau
their Court gave no regard to a ſingle Te
ſtimony; it was urged againſt the Prohibi
tion, that the Matter being within the
Cognizance, they might follow the Court
of their own Law; and though there are i
the Books different Opinions concerning th
Matter, yet they ſaid, ſince the 8 *Car.*
Prohibition had been denied on ſuch Su
miſe; *Hale*, Where the Matter to be pro
ved (which falls in incidentally in a Cau
before them,) is Temporal, they ought n
to deny ſuch Proof as our Law allows, an
it would be a great Miſchief to Executor
to be forced to have two Witneſſes, to th
Payment of every *petit* Sum, as is *Telv.* 9
A Prohibition was granted upon the no
admitting of one Witneſs to prove the Re
vocation of a Will, which is a ſtronger Caſe
becauſe the Matter is intirely of Eccleſiaſt
cal Cognizance; wherefore let there go
Prohibition, *&c.* 1 *Vent.* 291, 292. *Vid*
Hob. 188. *Show.* 88, 158, 173. *Doct.*
Stud. lib. 2. *cap.* 25, 28, 29. *Lat.* 117. *Ra*
123, 189, 191, 219. *Cro. Eliz.* 88, 66
3 *Mod.* 286. *Gilb.* 207, 208.

Paſ. Anno 1727. *in Banco Regis*, *Buc*
and *Atwood.*

* 20. If the Eccleſiaſtical Court will not a
low of one Evidence to a Releaſe, a Proh
bition ſhall go even after Sentence. *Vid*
1 *Vent.* 146, 219, 343. 2 *Vent.* 181. *Sal*
31.

2. *Rule*

2. *Rules in.*

1. IF the Eccleſiaſtical Judge will not allow ſuch Proof as the Common Law allows, a Prohibition ſhall go; and that tho' the Common Law may not determine the Thing; yet they may inhibit the Judge, till he ſubmit himſelf to the Allowance of ſuch Proof as is good at Law. *Yelv.* 92.

2. If the Eccleſiaſtical Court will diſallow the Proof; becauſe but one Witneſs, a Prohibition will lie; for it is not ſufferable, by our Law, to diſallow ſuch Proof againſt a Legacy, which is allowable by Law againſt a Statute, Recognizance, or Judgment; for that would make a *Devaſtavit.* *Yelv.* 188.

3. Such Proof, as is good at Common Law, ought to be allowed in the Spiritual Courts, and at Common Law it is not neceſſary to prove a Payment of a Debt by two Witneſſes. 3 *Mod.* 286.

VII. *Where they refuſe a Copy of the Libel or Interrogatories.*

1. *The Libel to be by the Advice of, and ſigned by an Advocate.*

NO Judge in any of the ſaid Courts of the Archbiſhop ſhall admit any Libel, or any other Matter, without the Advice of an Advocate, admitted to Practice in the ſame Court, or without his Subſcription. *Can.* 131.

2. *When*

2. *When the same should be del vered.*

COpies of Libels grantable in the Spir tual Court, are to be delivered to th Party, Defendant, on his Appearance. *St* 2 *H.* 5. *c.* 3.

3. *What to be deemed a Delivery.*

SIR *William Scroggs* prayed a Prohibitio to the Arches, on appeal from the inf rior Ordinary, for not delivering a Copy the Libel, which was controverted in th Arches, whether Proclamation, or Readi *alta Voce* in Court be a Delivery, which th Ecclesiastical Court conceived it was. An *per Curiam*, a Prohibition was denied; be cause on the 2 *H.* 5. *cap.* 3. the Party ha Election to have a Prohibition *quousq*; Cop delivered, or may appeal for the *Gravame* this being on a Presentment of the Church wardens, and having made Election, an the Matter of their Cognizance, no Proh bition ought to go; but on their declarin such a Publication, a Delivery contrary t the Law, a Prohibition granted *nisi*. 3 Ro 565. 12 *Co.* 26, 27.

4. *Whether their Proceedings may be ſtayed, and whether they puniſhed, and how, for ſuch Refuſal.*

1. A Man may have an Action againſt the Eccleſiaſtical Judge, if he refuſe to deliver him a Copy of the Libel, according to the Statute 25 *H.* 5. whether the Cauſe of the Libel be ſpiritual, or not. *Fitzh. Nat. Brev.* 43. E.

2. It was agreed, if one be ſued in Court Chriſtian, *ex Officio*, or by Libel, and demand the Copy of the Articles, or Libel, and is denied, he ſhall have a Prohibition. *Mo.* 917.

3. A Prohibition was granted to the Eccleſiaſtical Court, becauſe they refuſed to deliver a Copy of the Articles, and ruled a Prohibition to go, until they deliver ſuch a Copy; but the Prohibition was abſolute without the *Quouſq*; and *Lindſey* moved for Conſultation, but refuſed, yet granted a *Superſedeas*, and further reſolved that *Stat.* 2 *H.* 5. *c.* 3. extends where the Proceeding in the Eccleſiaſtical Court is *ex Officio*, as well as betwixt Party and Party, and the Report of *Mo.* 756. is ill reported, for *Cro. Jac.* 37. is contrary, and that a Prohibition lies for not delivering the Copy of a Libel in ſuch Caſe. *Ray.* 170.

4. The Plaintiff excommunicate prayed a Prohibition for not delivering a Copy of the Libel, which the Court granted, but conceived that, on Delivery of the Libel, the

the Excommunication ſtands in Force. 1 *Keb.* 726. Q.

5. *Bertie* prayed a Prohibition, *quouſque* Copy of the Libel delivered, which the Court refuſed, without an Affidavit; that the Party tendered the Fees, and yet they refuſed to deliver it, as is uſed *in Com. Banc.* 1 Keb. 825. q.

6. A Prohibition was applied for; for that he was cited into the Eccleſiaſtical Court to anſwer to Articles, without delivering to him a Copy of the Articles, and it was granted, *quouſq;* they ſhould deliver to him a Copy; but the Prohibition taken out was abſolute, which the Court being informed of, did not think fit to grant a Conſultation, but to diſcharge the Prohibition by *Superſedeas*; whereupon they proceeded and excommunicated the Party for Default of Anſwer, who again moved the Court for a Prohibition, and had it, with a *Mandamus* therein to abſolve him, if it were for not Anſwering before they gave him a Copy of the Articles. 1 *Vent.* 5.

7. A Prohibition lies, for denying a Copy of the Libel, to any Eccleſiaſtical Court; *nam Jura Eccleſiaſtica ſunt limitata*, and the Party ought to know whether the Matter be within their Juriſdiction, and how to Anſwer. 1 *Ro. Rep.* 337. *Dighton's* Caſe *Et Mich.* 2 *Annæ*, *Banco Regis*, it was ſaid by *Holt* Lord Ch. Juſt. That it was formerly held by all the Judges of *England*, That when there was a Proceeding, *ex Officio*, in the Eccleſiaſtical Court, they were not bound to give the Party a Copy of the Articles;

ticles; but the Law is otherwiſe; for in ſuch Caſe, if they refuſe to give a Copy of the Articles, a Prohibition ſhall go, *quouſq*; it be given; and accordingly a Prohibition was granted *per Cur'*. Salk. 553.

VIII. *Where a Variance between the Temporal and Spiritual Law.*

The Temporal to prevail.

1. THE Judges of the Common Law are not bound by the Rules of the Civil Law, but at Liberty to follow their own, where the two Laws differ. 1 *P. Will.* 12.

2. By the Canon Law, the Iſſue born before Eſpouſals, if the Parties ever marry after, is lawful, and as ſuch inheritable, as the Iſſue born in lawful Wedlock; but as this Canon was never received and allowed here, ſo it is of no Force amongſt us. *Vide* 5 *Co. de Jure Regis Eccl.* 11. *b. Pal.* 469. 12 *Co.* 92. *Doct. & Stud. lib.* 1. *cap.* 7. *fo.* 13. *b.*

3. The Canon has fixed the Time of Lapſe to be, *per Septimanas*; yet our Law, regardleſs of the Canon, declares it ſhall be reckoned, *per Menſes*, in the Kalendar, as was adjudged, 5 *E.* 3. *Poph.* 157.

4. The Council of *Lions in Bigamis*, *&c.* are expounded by Statute how they ſhall be underſtood; ſo that the Bulls of the Pope himſelf, or other Conſtitutions, Canons, Ordinances, *&c.* are (if not received and allowed) of no Force againſt the Com-

mon Law of the Realm, as is *Poph.* 157. *Da.* 72. *a. Pal.* 469. *Nay, they have their Force from Reception and Allowance, which incorporates them, as it were, into, and makes them Part of the Common Law; and tho' they may proceed according to the Eccleſiaſtical Laws; yet they muſt govern themſelves by the Rules of the Superior Common Law, as I think the Books ſufficiently, and paſt all Contradiction, make out.*

5. The Court agreed, That no Prohibition lieth, *Reſpectu Juriſdictionis*, in Suits for Burial Fees; but, *in reſpectu Triationis* it doth, after an Iſſue offered there, upon the Preſcription, and ſo it was reſolved at *Oxon, Term. Mich.* 1665. in a Caſe propounded by the Lord *Bridgman* Ch. Juſt. *Com. Ban.* on a *Modus* ſued for of Iron Oar in Tithes, where the Iſſue was on the Preſcription it is triable at Common Law, and if found for the *Modus*, the Eccleſiaſtical Court may proceed, if not, *ſtet prohibitio:* And ſo where-ever their Laws and ours differ, a Prohibition lieth; where they do not, they proceed; for they have ſome Preſcriptions of ten, ſome of twenty, and others of forty Years; and one Preſcription between Parties preſent, another between Parties abſent; but ours, in all Caſes, is *Temps d'ont, &c.* ſo Bounds of Pariſhes, though incidental, is triable at Common Law, *&c.* 3 *Keb.* 527. *Lutw.* 1059. *Salk.* 334. *Hob.* 175, 176. *Salk.* Title *Prohibition.* 12 *Co.* 72.

6. At Common Law, Notice to the Parſon, in Caſe of Tithes of a Severance from the nine Parts, is not neceſſary, though, by the

the Eccleſiaſtical Law, it is. 3 *Mod.* 268. *Ro. Ab.* 300. *Caſe* 9.

7. If a Canon Law be againſt the Law of the Land, the Biſhop ought to obey the Law of the Land. See 19 *E.* 3. Tit. *Quare non admiſit.* 10 H. 7. 17. 12 *Co.* 72. 3 *Keb.* 527. *Lutw.* 1059. *Salk.* 334. *Hob.* 175, 176. *P. Will.* 12. 5 *Co. De Jure Regis Eccleſiaſtico* 11. *Pal.* 469. *Pop.* 157. *Dav.* 72. *Ro. Ab.* 3. *Ca.* 9. *Salk.* Tit. *Prohibition.*

8. By the Eccleſiaſtical Law a Man may not give his Eſtate till twenty-five, at Common Law he may do it at twenty-one, or ſooner in ſome Caſes. *Doct. & Stud. lib.* 2. *c.* 28. *fo.* 113, 114.

In Scac. Mich. 3 *Geo.* 2. *Price* againſt *Pratt* and others.

9. Lord Ch. Baron ſaid, That all Curates are at Common Law removable at Pleaſure, though, by the Eccleſiaſtical Law, they are for Life. *The Eccleſiaſtical Laws, as ſuch, may bind Churchmen, as conſenting thereunto,* quoad Rem Eccleſiaſticam, *but ſuch Eccleſiaſtical Laws do not bind the Laity, as not being Party to the making of ſuch Laws, neither can they bind, as I conceive, Eccleſiaſticks when in of Temporal Right, though the Office to be exerciſed is of a Spiritual Sort, as if a Miniſter, Curate, or Chaplain to an Impropriator, Donator,* &c. *by the Licence of his Maſter, hath an under Curate, he is not affected by this Eccleſiaſtical Law; for that the Curate himſelf being removable at Pleaſure, ſo his under Curate muſt be ſo too; elſe the proper Curate might be removed for the Crimes of the Deputy; and beſides the Church,* &c. *are* ex-

tra *the Ordinary Juriſdiction. Vide* where the Eccleſiaſtical Courts refuſe ſuch Plea or Evidence as would be good in the Temporal Courts, whether in Law or Equity. See 12 *Co.* 72.

IX. *Where Matters of Temporal Cognizance are mix'd or fall in incidentally with Matters of Eccleſiaſtical Cognizance.*

1. A Prohibition lieth where a Suit is proſecuted in the Eccleſiaſtical Court for Matters of a mix'd Nature, as partly Spiritual and partly Temporal. 4 *Co.* 20. *b.*

2. Where ſome Temporal Matter depends on an Eccleſiaſtical Cauſe, and is neceſſary to be determined with it; there, though the Eccleſiaſtical Judges may try ſuch Temporal Matter; yet they ought to do it by the Rules of the Common Law, to which it properly belongs; elſe the Common Law Judges would interpoſe, by ſending Prohibitions. 1 *P. Will.* 12. *Vide* 12 *Co.* 65, 67. *Yea, though the Matter be meerly, properly, and ſtrictly, of Eccleſiaſtical Cognizance; yet, I take it, the Eccleſiaſtical Courts ought always, as well in Law as in Conſcience, to have in View ſuch Rules of the Common Law as are to govern them; as to admit ſuch Plea, Evidence,* &c. *as would hold, either in the Courts of Law, or Equity; elſe, if I miſtake not, they may be prohibited and injoined from Proceeding,* &c. *and if they will, notwithſtanding ſuch Inhibition, proceed, if not within*

in the Danger of a Præmunire, *yet I apprehended, an Attachment in ſuch Caſe is properly iſſuable.*

3. If the Suit be in the Spiritual Court for Things Spiritual, mix'd with a Matter triable at the Common Law, a Prohibition ſhall be granted, *quoad* the Matter triable at the Common Law, and not for all, if they may be ſevered. *Mich.* 14 *Banco Regis*, *Fiſh* and *Chamberlaine*. Contra *Mich.* 8 *Jac. Jenor's* Caſe, *Ro. Abr. Prohibition*, *fo.* 34. E. *Caſe* 1.

4. If a Man libel in the Eccleſiaſtical Court for two Things, one whereof belongs to the Juriſdiction of the Eccleſiaſtical Court, and the other is triable at Common Law, and Sentence is given; if by this Sentence the Puniſhment is mix'd, ſo that it muſt either ſtand for both, or for neither, a Prohibition ſhall be granted for both. *Mich.* 38 & 39 *Eliz. Butler* and *Bartlet*. *Ro. Abr. Prohibition*, *fo.* 316. *Caſe* 6.

5. In Caſes in the Eccleſiaſtical Court of Eccleſiaſtical Cognizance the Matters incidental which fall out to be Temporal, are to be dealt withal in the Temporal Courts, and not in the Eccleſiaſtical Courts. 2 *Inſt.* 608, 613. 12 *Co.* 67, 68.

6. Where the original Matter belongs to the Court Chriſtian, and a Thing of Common Law Cognizance falls in Iſſue, it ſhall be tried there, as where one claims by Deviſe, and another pleads a Gift of the ſame Thing. *Eadem Lex*, where the Original belongs to the Common Law, as in *Quare Impedit* able, or not able, it ſhall be tried by

the Common Law, &c. *Bro. Abr. Trial*, 148. 12 *Co.* 65, 67, 68.

7. An Executor being ſued for a Legacy in the Spiritual Court pleaded Payment, and offered to prove it by one Witneſs, which the Judge refuſed, and gave Sentence againſt him; whereon a Prohibition was moved for, *Et per Cur'*, where the Eccleſiaſtical Court proceed in a Matter meerly Spiritual, if they proceed in their own Manner, tho' that is different from the Common Law, no Prohibition lies, as in Probate of Wills, if they refuſe one Witneſs, no Prohibition lies. *Noy* 12. 2 *Ro.* 300, 2. Where they have Cognizance of the original Matter, and an incident happens which is of Temporal Matter, or Cognizance, or triable at Law, they may try the Incident; but they muſt try it as the Common Law would, as in a Suit for Tithes, or a Legacy, if the Defendant pleads a Releaſe, or Payment, or in a Suit to prove a Will, if the Defendant pleads a Revocation. 1 *Ro.* 12. 2 *Ro.* 42. *Yelv.* 92. So in the Caſe at Bar, they ſhall try the Matter, Payment, or Non-payment; but then they muſt admit ſuch Proof as the Common Law would, or elſe they ſhall be prohibited. 3. A bare Suggeſtion, That the Defendant hath but one Witneſs, and that they take Exception to his Credit and Reputation, this is no Cauſe of a Prohibition; for if they admit the Proof of one Witneſs, they ſhall judge whether he be a credible one or not; and the Party has no Remedy but by Appeal. 4. That it is not too late to come for a Prohibition after Sentence;

Qu?

tence; for the Sentence in this Caſe is the Grievance, Conſultation denied. *Salk.* 547. 1 *Show.* 158, 172. *Carth.* 142. the ſame Caſe.

8. Where the Matter to be proved (which falls in incidentally before the Eccleſiaſtical Court) is Temporal, they ought not to deny ſuch Proof as our Law allows. 1 *Vent.* 291.

9. A Prohibition was granted to Court Chriſtian to ſtay a Suit there for the Probate of a Will of Goods and Lands alledged to be revoked, and ſo proved at Law, in a Suit for Lands, on Iſſue *Non Deviſavit*, &c. Cro. Car. 94.

10. If an Adminiſtrator ſue for a Legacy due to his Teſtator in the Spiritual Court, and the Defendant pleads a Releaſe of the Teſtator in Bar, and the Plaintiff, to avoid it, ſays his Teſtator was an Idiot, this Idiocy ſhall be tried there, and no Prohibition, they having Juriſdiction of the original Matter. *Mich.* 15 *Jac. Percher* and *Wheble.* Prohibition denied; but againſt the Opinion of *Warburton. Ro. Abr. Prohibition*, U. 15. *Ideo quære.*

11. The Indictment was for Aſſaulting, Beating, Wounding, and endeavouring to raviſh, the Wife of *B.* upon which the Party was convicted, and afterwards the Husband brought an Action of Treſpaſs for the ſame Cauſe; and now the Party being alſo libelled againſt in the Spiritual Court, for the ſame Fact, (*viz.*) for ſoliciting her Chaſtity, moved for a Prohibition to the Proceedings in the Spiritual Court, and it was urged for the Juriſdiction of the Spiritual Court,

That they may puniſh for the Solicitation and Incontinency, and that this Suit was *pro ſalute Animæ*, the other for Fine and Damages. *Sed per Cur'*, a Prohibition was granted; for it being an Attempt and Solicitation to Incontinency, coupled with Force and Violence, it does by Reaſon of the Force, which is Temporal, become a Temporal Crime *in toto*: As if one ſay, *Thou art a Whore and a Thief, or thou keepeſt a Bawdy-Houſe*, which are Temporal Matters, the Party ſhall not proceed in the Spiritual Court, whereas if it were only, *Thou art a Whore*, a Libel lies in the Spiritual Court, ſo if it be ſaid of a Woman, *That ſhe is a Bawd* only, and not that ſhe keeps a Bawdy-houſe. But by the Lord Ch. Juſt. *Holt*, If one commit Adultery, and the Husband brings Aſſault, this ſhall not hinder the Spiritual Court; for it is a criminal Proceeding there, and no Indictment lies at Common Law for Adultery. *Salk.* 552. *Fareſ.* 78, 79. *le meſme Caſe.* 12 *Co.* 67, 68.

12. By Mr. Juſtice *S. Eyre*, There are many Caſes which are properly and purely of Eccleſiaſtical Cognizance; but if a Title of Lands comes to be tried in the Temporal Court, into which thoſe Matters accidentally fall in, they are to be judged of and tried by that Temporal Court. *Skin.* 455.

Paſ. 1727, *Banco Regis*, *Buck & al'* ver. *Atwood & al'*.

* 13. In all Caſes where the Eccleſiaſtical Court or Admiralty, can take Notice of the Principal Matter, they, of Courſe, may take Notice of an Incident to it; and that though ſuch Incident be a Matter *properly* cognizable

cognizable at Common Law; but then it is to be obſerved, as the Court ſaid on this Occaſion, this muſt be underſtood with this *Proviſo*, that they uſe it according to the Rules of the Common Law. See 12 *Co.* 65, 67.

14. Where the Common, or Statute Law, gives Remedy *in Foro Seculari*, whether the Matter be Temporal or Spiritual, the Cognizance of the Matter, belongeth to the King's Temporal Courts, unleſs the Juriſdiction of the Eccleſiaſtical Courts be ſaved, to proceed according to the Eccleſiaſtical Laws. *Co. Lit.* 96. *b.* *Salk.* 673.

Vide *their Judges and Officers, where bound to take Notice of the Temporal Law.* Vide *Ro. Abr.* 302. *Caſe* 19. 3 *Mod.* 286.

X. *In Caſes where either their Courts are prohibited by Statute, or the Matters have been, or are, determinable in the Temporal Courts.*

1. *As the Matters wherein they deal are prohibited by Statutes.*

1. *Suing to the Court of* Rome, &c.

1. *Statutes concerning and the Conſtructions thereof.*

1. *General.*

1. AT a Parliament holden 25 *E.* 3. it was enacted, That as well they who obtained Proviſions from *Rome*, as they who put Stat. 25 E. 3.

put them in Execution, ſhould be out of the King's Protection, and that one might deal with them as with the King's Enemies, and he who offended againſt ſuch *Proviſors*, in Body, Goods, or other Poſſeſſions ſhould be excuſed againſt all Perſons, and ſhould never be impeached or grieved for the ſame, by which Law any Man might lawfully kill ſuch Offender, as a common Enemy againſt the King and his Country; ſo heinous were ſuch Offences then holden; afterwards in the ſame Year it was in open Parliament, by the grievous Complaint of all the Commons of the Realm ſhewed, that the Grievances and Miſchiefs aforeſaid did daily abound to the great Damages and Deſtruction of all this Realm, more than ever were before, (*viz.*) That of late the Biſhop of *Rome*, by *Procurement of Clerks*, and otherwiſe, had reſerved to his Collation generally as ſpecially, as well Archbiſhopricks, Abbies, and Priories, as all other Dignities, and other Benefices of *England*, which were of the Advowry of the People of Holy Church, and gave the ſame, as well to Aliens, *&c.* and took to himſelf the Firſt-fruits, and many other Profits, and a great Part of the Treaſure of the Realm was carried away, and diſpenſed out of the Realm, and by ſuch Reſervation many Clerks advanced by the rightful Patrons, were ſuddenly put out; the ſaid Commons therefore prayed the King that ſince the Right of the Crown, and the Law of *England* was ſuch; that upon the Miſchiefs and Damages which happened he ought, and was bound, of the Accord of his ſaid People thereof to provide

Remedy

Remedy and Law, for avoiding the Miſchiefs and Damages which thereof came, and that it might pleaſe him thereupon to ordain Remedy. The ſaid King ſeeing the Miſchiefs and Damages before named, and having Regard to the *Stat.* made in the Time of his Grandfather *E.* 1. which Statute is ſtill in Force; and as he was bound by his Oath to ſee the ſame be kept as a Law of this Realm, though by Sufferance and Negligence, it had been ſince attempted to the contrary. Alſo having Regard to the Complaints of his People in ſeveral Parliaments for ordaining Remedy, for the great Damages and Miſchiefs, which then had, and daily did, happen to the Church of *England*, by the ſaid Cauſes; by the Aſſent of all the great Men, and the Commonalty of the ſaid Realm, to the Honour of GOD, and Profit of the ſaid Church of *England*, and of all this Realm, did ordain and eſtabliſh, that the free Election of Archbiſhops, Biſhops, and all other Dignities and Benefices electory of *England*, ſhould be holden from thenceforth in the Manner as they were granted by the King's Progenitors and founded by his Anceſtors, *or of other Lords*, and that all Prelates and other People of Holy Church, who had Advowſons of any Benefices of the King's Gift, or any of his Progenitors, or of other Lords, or Donors, to do Divine Service, and other Charges thereof ordained, ſhould have their Collations and Preſentments freely, in the Manner as they were infeoffed by their Donors. And in Caſe that Reſervation, Collation, or Proviſion, be made by the Court of *Rome*,

of

of any Archbiſhoprick, Biſhoprick, Dignity or other Benefice, in Diſturbance of the Election, Collation, or Preſentation, aforenamed, That at the Time of the Avoidance that ſuch Reſervations, Collations or Proviſions, ought to take Effect, the ſaid King *Edward* the Third, and his Heirs, ſhould have and enjoy, for the ſame Time, Collations to Archbiſhopricks, and other Dignities elective, which be of his Avowry, ſuch as his Progenitors had before that free Election, was granted by the King's Progenitors, upon a certain Form and Condition, as to demand Licence from the King to chuſe, and after Election to have his Royal Aſſent, and not in other Manner, which Condition not kept, the King ought, by Reaſon to reſort to his firſt Nature; as by the ſaid Act more I hold my ſelf at large appeareth. 5 *Co. De Jure Regis* bound here to *Eccleſiaſtico.* 17. *a. b.* 18. *a. b.*

obſerve, that,

1ſt, So heinous were theſe Offences, That the Offenders were not only out of the King's Protection, but might be dealt with as Enemies to their King and Country, and thoſe who did any Thing againſt them, even to the Depriving them of Life it ſelf, were excuſable, as the Offenders were ſo conſidered. 2dly, Theſe Miſchiefs were held to be to the Deſtruction of the King and Realm. 3dly, This Law was made on the grievous Complaint, and at the Inſtance of all the Commons. 4thly, Theſe Evils were by the Procurement *of Clerks.* 5thly, Theſe Miſchiefs were by this Law further provided againſt, on the King's own Obſervation of them, and out of that Regard his Majeſty bore to the former Statute made in the Reign of his Grandfather, as well as out of that tender Regard his Majeſty had to the general and unanimous Complaints of his People. 6thly, This Statute was enacted to provide againſt the intolerable Miſchiefs therein recited and mentioned to grow from *Church Encroachments,* and the Abuſe Eccleſiaſticks made of the King and his Laws too Indulgent to theſe Ingrates: And moſt of the ſubſequent Laws, if not all of them, ſeem to me, to be founded on all, or moſt, or at leaſt, on ſome of the good Reaſons aforeſaid.

2. By

2. By the Stat. 27 *E.* 3. it was grievouſly complained to the King in Parliament by the Great Men, and Commons of the Realm, That divers People were, and had been drawn out of the Realm to anſwer to Things cognizable in the King's Courts, and alſo that the Judgments given in the ſame, were impeached in other Courts, in Prejudice and Diſinheriſon of the King, and of his Crown, and of all the People of his ſaid Realm, at all Times uſed; and where, upon good Deliberation had with the Great Men and others of his ſaid Counſel, it was aſſerted and accorded by the King, and Great Men, and Commons aforeſaid, that all the People of the King's Allegiance, of what Condition ſoever, that ſhould be drawn out of the Realm, in Plea, whereof the Cognizance pertained to the King's Court, or which did ſue in any other Court, to defeat or impeach the Judgments given in the King's Courts, ſhould incur the Danger of a *Præmunire*, as by the ſaid Act appeareth. 5 *Co. De Jure Regis Eccleſiaſtico* 19. *a.*

1. I apprehend from the Complaint of the Great Men mentioned in this Statute, the Lords were Parties complaining, and joined with the Commons therein.

2. And I obſerve ſo tender was this King and Parliament of Temporal Juriſdiction, that to ſeek Redreſs *any where elſe than in the King's Court for a Matter there cognizable, or to aim at the Diſabling a Judgment there, is held no leſs a Crime than to endeavour the Diſinheriſon of the King, his Crown and all the People of the Realm.* How cautious then ought Eccleſiaſticks, and their Judges, Officials, and other Officers to be, how they deal in Matters, *extra* this indulged Juriſdiction, as well to avoid the dangerous Conſequences, as for Conſcience-ſake, and to avoid Perjury, *&c.*

3. To nouriſh Love, Peace, and Concord between Holy Church and the Realm, and to appeaſe and ceaſe the great Hurt, Peril and importable Loſſes and Grievances, that had been done and happened in Times paſt, and that ſhould happen then after, if the Thing from thenceforth ſhould have been ſuffered to paſs; becauſe of perſonal Citations, and others then before paſſed, and commonly did paſs out of the Court of *Rome*, by feigned and falſe Suggeſtions and Propoſitions againſt all Manner of Perſons of the Realm, upon Cauſes whoſe Cognizance, and final Diſcuſſing pertained unto the King and his Royal Court; and alſo of Impetrations and Proviſions of Benefices and Offices of Holy Church pertaining to the Gift, Preſentation, Donation and Diſpoſition of the King, and *to other lay Patrons of this Realm*, as of Churches, Chapels, and other Benefices appropriate, to Cathedral Churches, Abbies, Priories, Chaunteries, Hoſpitals, and other poor Houſes, and of other Dignities, Offices, and Benefices occupied in Times paſt, and preſented by divers and notable Perſons of the ſaid Realm; for which Cauſes, and diſpenſing whereof, the good ancient Laws, Uſages, Cuſtoms, and Franchiſes of the ſaid Realm had been and were greatly blemiſhed and confounded, the Crown of their Sovereign Lord the King miniſhed, and his Perſon falſly defamed, his Treaſure, and riches of the Realm carried away, the Inhabitants and Subjects of the Realm impoveriſhed, and troubled, the Benefices of Holy Church waſted and deſtroyed, Divine Services, Hoſpitalities, Alms-Deeds,

Deeds, and Works of Charity withdrawn, the Commons and Subjects of the Realm in Body and Goods conſumed. The King (*E.* 3.) at his Parliament holden at *Weſtminſter, in Utas of St. Hill. anno* 38 of his Reign, having Regard to the Quiet of his People, *&c.* following the Ways of his Progenitors, which for their Time made certain good Ordinances and Proviſions againſt the ſaid Grievances and Perils, which Ordinances, and Proviſions, and all the other made in his Time, and eſpecially in the 25 and 27 of his Reign, the King by the Aſſent, and expreſs Will, and Concord, of the Dukes, Earls, and Barons, and the Commons of this Realm, and of all other whom theſe Things touched, by good and meet Deliberations and Adviſement did approve, accept, and confirm, as by the ſaid Act appeareth. 5 *Co. De Jure Regis Eccleſiaſtico.* 19. *b.* 20. *a. b.*

This Statute is, in great Meaſure, in Affirmance of the former Statutes, and of the ancient Common Law, and it is to be obſerved from this Statute, as well as from almoſt infinite other Authorities, that there were, long before this Act made, many Churches, Chapels, *&c.* of the Gift, Donation, and Diſpoſition of the King, and other Lay Patrons; whoſe Diſinheriſon therein, by the uſurped Juriſdiction of the Pope, and other Tools of Eccleſiaſtick Oppreſſion, this Statute was made to prevent.

4. It is provided that none ſhall take in Farm any Church Benefices, from any Aliens, but only from the King's Subjects here, *ſans* Licence, neither ſhall ſend Money or other Thing, actually out of the Realm, for ſuch Aliens, *ſans* Licence, on Pain of the Statute of *Proviſors.* 27 *E.* 3. *Stat.* 3 *R.* 2. *cap.* 3.

5. It

5. It is declared by Parliament, *anno* 16 *R.* 2. *cap.* 5. That the Crown of *England* hath been ſo free at all Times, that it hath been in Subjection to no Realm; but immediately ſubject to GOD, and none other, and that the ſame ought not in any Thing, touching the Regality of the ſame Crown, to be ſubmitted to the Biſhop of *Rome*, nor the Laws and Statutes of this Realm by him fruſtrated or defeated at his Will, to the perpetual Deſtruction of the King, his Sovereignty, Crown and Regalty, and of all his Realm. And the Commons in that Parliament affirmed, That the Things attempted by the Biſhop of *Rome* were clearly againſt the King's Crown, and his Regalty, uſed and approved in the Time of all his Progenitors; wherefore they and all the Liege Commons of the ſame Realm, would ſtand with the King and his Crown and Regalty in the Caſes aforeſaid, and in all other Caſes attempted againſt him, his Crown, and Regalty, in all Points to live and die; and moreover they pray'd the King, *and him required by Way of Juſtice*, that he would examine *all the Lords in Parliament, as well Spiritual as Temporal*, ſeverally and all the States of the Parliament, *how they thought of the Caſes aforeſaid*, which were ſo openly againſt the King's Crown, and in Derogation of his Regalty, *how they would ſtand in the ſame Caſes with the King in upholding the Rights of the Crown and Regalty.* Whereupon the Lords Temporal, ſo demanded, did anſwer every one by himſelf, that the Caſes aforeſaid were clearly in Derogation of the King's Crown and Regal-

ty, as was well known, and had been long Time known, and that they would ſtand with the ſaid Crown and Regalty, in thoſe Caſes eſpecially, and in all other Caſes which ſhould be attempted againſt the ſaid Crown and Regalty, in all Points, with all their Power. And moreover it was demanded of the Lords Spiritual preſent, and the Procurators of thoſe abſent, their Advice and Will in all thoſe Caſes, which *Lords*, (*viz.*) *The Archbiſhops*, *Biſhops*, being in the Parliament ſeverally examined *making Proteſtation*, *That it was not their Minds to deny or affirm*, *That the Biſhop of* Rome *might not excommunicate Biſhops*, *nor that he might make Tranſlation of Prelates after the Laws of Holy Church*, *anſwered and ſaid*, *That if any Executions or Proceſſes made in the King's Courts*, *as before*, *were made by any*, *and Cenſures of Excommunication be made againſt any Biſhop of* England, *or any other of the King's Liege People*, *for that they had made Executions of ſuch Commands*, *and if any Executions of ſuch Tranſlations be made of any Prelates of the ſaid Realm*, *which Prelates were very profitable and neceſſary to the King and his ſaid Realm*; *or*, *That his Sage Men of his Counſel*, *without his Aſſent*, *and againſt his Will*, *be withdrawn and alloined out of the Realm*; *ſo that the Subſtance and Treaſure of the Realm be deſtroyed*, *That the ſame was againſt the King and his Crown*, *as it was contained in the Petition before-mentioned*; *and likewiſe the ſame Procurators every one by himſelf examined upon the ſame Matters anſwered*, *and ſaid*, *in the Name*, *and for their Lords*, *as the ſaid Biſhops*

had ſaid and anſwered; that they the ſaid Lords Spiritual ought and would ſtand with the King in theſe Caſes lawfully in maintaining of his Crown, and in all other Caſes touching of his Crown and Regalty, as they were bound by their Allegiances. Whereupon the King by the Aſſent aforeſaid, and at the Prayer of his ſaid Commiſſioners, did ordain and eſtabliſh, That if any purchaſe or purſue, or cauſe to be purchaſed or purſued, in the Court of *Rome*, *vel alibi*, *or elſewhere*, any ſuch Tranſlations, Proceſſes, and Sentences of Excommunication, Bulls, Inſtruments, or any other Things which touched the King, their Lord, againſt him, his Crown, and Regalty, or his Realm, as is aforeſaid, and they which bring within the Realm, or them receive, or make Notification, or any other Execution within the ſame Realm, or without, that they, their Notaries, Curators, Maintainers, Fautors, and Counſellors ſhould be put out of the King's Protection, and their Lands and Tenements, Goods and Chattels forfeit to the King, and they attached by their Bodies, if they may be found, and brought before the King and his Counſel, there to anſwer to the Caſes aforeſaid, or that Proceſs be made againſt them by *Præmunire facias*, as it is ordained in other Statutes of Proviſors. And others which do ſue in any other *Court*, in Derogation of the Regalty of the King, as by the ſaid Act alſo appeareth. 5 *Co. De Jure Regis Eccleſiaſtico* 21. *a. b.* 22. *a. b.*

It ſeems to me that the natural Meaning of this Stat. is, that the ſeveral Forfeitures ſhould be abſolute for any of the Offences againſt the Statute, and not only to inforce an Appearance, as one Authority in the Books ſeems to intimate; *Ideo Quære.*

6. The Commons did 6 *H.* 4. moſt grievouſly complain to the King of the horrible Miſchiefs, and damnable Cuſtoms, which then

then were introduced of New in the Court of *Rome*; That no Perſon, Abbot, or other ſhould have Proviſion of any Archbiſhoprick, or Biſhoprick, which ſhould be void till he had compromiſed with the Pope's Chamber, to pay great and exceſſive Sums of Money, as well for the Firſt-Fruits thereof, as for other leſs Services in the ſame Court, and that ſuch Sums, or the greater Part, were paid before-hand, and were treble, or at leaſt, double of what was anciently accuſtomed, and otherwiſe by the Occaſion of the ſaid Proviſions, whereby a great Part of the Treaſure of this Realm had been carried to that Court, and ſo would be, for the Future, to the great Impoveriſhing of the Archbiſhops and Biſhops in this Realm, and elſewhere within the King's Dominions, if convenient Remedy were not provided for the ſame. The King to the Honour of GOD Almighty, as well as to eſchew the Damage of this Realm, as to the Peril of their Souls who own to be advanced to any Archbiſhopricks and Biſhopricks within the Realm of *England*, and *elſewhere*, within the King's Dominions out of the ſame Realm, by the Advice and Aſſent of the great Men of his Realm, did ordain and eſtabliſh that they and every of them that ſhould pay to the ſaid Chamber, or otherwiſe, for ſuch Fruits and Services, greater Sums of Money than had been anciently accuſtomed to be paid, they and every of them ſhould incur the Forfeiture of as much as they might forfeit towards the King, as by the ſaid Act appeareth. 5 *Co. De Jure Regis Eccleſiaſtico* 23. *b.* 24. *a. b.*

Tho' this King and Parliament were Papiſts, yet they had but ſlender Notions *of the Pope's Supremacy, and leſs of Church Tyranny.*

7. By Stat. 7 *H.* 4. *c.* 6. None Religious or Secular, of what Eſtate or Condition ſoever, by Colour of any Bulls containing Privileges to be diſcharged of Tithes, appertaining to Pariſh-Churches, Prebends, Hoſpitals, Vicarages, purchaſed before 1 *R.* 2. or after not executed, ſhould put in Execution any ſuch Bulls, purchaſed, or to be purchaſed in Time to come, upon the Pain of a *Præmunire*, as by the ſaid Act appeareth. 5 *Co. De Jure Regis Eccl.* 24. *b.*

8. By Stat. 3 *H.* 5. *c.* 4. it is declared, That whereas in the Time of *H.* 4. Father of the ſaid King, in the ſeventh Year of his Reign, to eſchew many Diſcords, *&c.* (*prout* in the Stat.) by Means of many Proviſors then made, or to be made, by the *Pope*, and Licences thereupon granted by the ſaid late King, amongſt other Things, it was ordained and eſtabliſhed, That no ſuch Licence or Pardon, ſo thentofore granted, or then after to be granted, ſhould be available to any Benefice, full of an Incumbent, at the Date of ſuch Licence or Pardon granted: *Neverthelefs* divers Perſons having Proviſions of the Pope of divers Benefices in *England*, and elſewhere, and Licences Royal to execute ſuch Proviſions, have by Colour of ſuch Proviſions, Licences, and Acceptations of the ſaid Benefices, ſubtilly excluded divers Perſons of their Benefices, in which they had been long Incumbents of the Collations of the very Patrons Spiritual, to them duly made to their Intent, to the final Deſtruction, and Subverſion of the Eſtates of the ſaid Incumbents. The King, willing to avoid ſuch Miſchiefs, and ordain and eſtabliſh,

That

That all the Incumbents of every Benefice of Holy Church, of the Patronage, Collation, or Preſentation of Spiritual Patrons, might quietly and peaceably enjoy their ſaid Benefices, without being unquieted, moleſted, or any wiſe grieved, by any Colour of ſuch Proviſions, Licences, and Acceptations: And that all the Licences and Pardons upon and by ſuch Proviſions made in any Manner ſhould be void, and of no Value or Moment: And that if any ſhould find himſelf grieved, moleſted, or inquieted in any wiſe from thenceforth by any, in Colour of ſuch Proviſions, Licences, Pardons, or Acceptations, That the ſame Moleſtors, Grievors, or Inquietors, and every of them, ſhould have and incur the Pains and Puniſhments contained in the Statutes of Proviſors before that Time made, as by the ſaid Act appeareth. 5 *Co. De Jure Regis Eccl.* 24. *b.* 25. *a. b.*

9. None to ſue to *Rome*. *Vide Stat.* 21 *H.* 8. *c.* 13.

10. At a Convocation holden *anno* 22 *H.* 8. by publick Inſtrument made by all the Biſhops, and the whole Clergy of *England*, the King was acknowledged to be Supreme Head of the Church of *England*, and afterwards, on the 24th of the ſame King it appears, that the Statutes of *Præmunire* remained in Force againſt Eccleſiaſtical Judges for holding of Pleas meerly determinable

Wherefore I muſt think, if thoſe Judges will hear and determine Matters *extra* their Juriſdiction, they are in Danger of a *Præmunire*, as the Caſe is within the Miſchiefs provided againſt by the Statute, as well as the King is more eminently preſent in his ſuperior Courts of Law, than in the Eccleſiaſtical Courts, which are but

but inferior and ſubordinate Courts,

minable by the Common Law, as it is in 3 *Inſt.* 121.

and the King may be ſaid to be in ſome Sort diſinherited thereby, as he is thereby, *quoad* that particular Matter, ſo falſly and unjuſtly determined, ouſted of his Juriſdiction in his Superior Temporal Courts, and the Matter carried over from his Courts of Law *ad aliud examen.* The Temporal Courts are immediately the King's Courts, and though the other may be ſaid alſo to be his; yet that but mediately, for they are Courts of Biſhops and other Eccleſiaſticks, though ſubordinate to the Controul of the King's Superior Courts of *Weſtminſter.*

11. Appealing to *Rome* from any of the King's Courts is made a *Præmunire*, by Stat. 24 *H.* 8. *c.* 12. and 25 *H.* 8. *c.* 19. by which is enacted, that all ſuch Appeals as formerly were made to *Rome*, ſhould, from thenceforth, be made to the High Court of Chancery. *Hawk. Pl. Cro. Præmunire* 20.

12. Stat. 2 *H.* 4. *c.* 4. put the *Ciſtercians* in a *Præmunire* for purchaſing and putting in Execution Bulls of Exemption *from Tithes* of their Lands, purchaſed after *the Decree of Adrian received here. Pop.* 157.

13. The Statutes which reſtrain the Pope's Proviſions to the Benefices of Advowſons of Spiritual Men were made; for that the Spiritual Perſons *durſt not*, in their juſt Cauſe, ſay againſt the Pope's Proviſions; ſo as thoſe Statutes were made but in Affirmance of the Common Law. 5 *Co. De Jure Regis Eccl.* 23. *a.*

14. The Cauſe which moved, and almoſt enforced, the *Engliſh* Nation to make the Stat. 16 *R.* 2. againſt Proviſors, and other Statutes of the ſame Nature, were of the greateſt Importance that could poſſibly ariſe in any State; for theſe Laws were made to uphold the Sovereignty of the Crown,

Crown, the Liberty of the People, and the Common-weal, which otherwiſe had been undermined, and utterly ruined by the Uſurpation of the Biſhop of *Rome*. *Da.* 85. *a.*

15. Where it is ſaid, That any Man, for any Offence committed, ſhall incur a *Præmunire*, it is meant, That he ſhall incur the ſame Puniſhment as is inflicted on thoſe who tranſgreſs the Stat. 16 *R.* 2. *c.* 5. commonly called the Statute of *Præmunire*. *Blo. Law Dict. Præmunire.*

16. If a Clerk ſue another Man in the Court of *Rome*, for a Matter Spiritual, where he could have had Remedy in the Court of his Ordinary within the Realm, he ſhall have a *Præmunire*; *quia trahit ipſum in placitum extra Regnum. Ideo in Caſu Statuti* 19 *E.* 4. 3. 11 *H.* 4. *Fitz. Abr. Præmunire* 6.

2. *Particular to the Word* Alibi.

1. *Mich.* 11 *H.* 4. It was adjudged by the whole Court, That a Suit in the Eccleſiaſtical Court, within the Realm, for a Temporal Cauſe was in the Caſe of a *Præmunire*. 3 *Inſt.* 120.

2. Where the 16 *R.* 2. *c.* 5. ſaith *in Curia Romana, vel Alibi*, Eccleſiaſtical Courts within the Realm are within this Word, *Alibi*. 3 *Inſt.* 120.

3. *Note*, That the Statute of *Præmunire* is *in Curia Romana, vel Alibi*, which is intended *in Curia Epiſcopi*; and therefore if a Man be excommunicated for a Matter of

Common Law Cognizance, a *Præmunire* lieth. *Bro. Abr.* Tit. *Præmunire* 12.

4. If a Man be excommunicate in the Spiritual Court for Treſpaſs, or ſuch a Thing as belongeth to the King, his Crown, and Royal Dignity, *&c.* the *Party*, if he will, may have a *Præmunire facias* againſt him. 3 *Inſt.* 122. Vide *Doct. & Stud. lib.* 2. *c.* 23. or 24

5. Suits in the Admiralty and Eccleſiaſtical Courts within the Realm are within the Statute 16 *R.* 2. 5. by Force of theſe Words, *or elſewhere*, if they concern Matter, the Cognizance whereof belongs to the Common Law, as where a Biſhop deprives an Incumbent of a *Donative*, or excommunicates a Man for hunting in his Park, *&c.* but it ſeemeth that a Suit in thoſe Courts for a Matter which appears not by the Libel it ſelf; but only by the Defendant's Plea or other Matter ſubſequent to be of Temporal Cognizance (as where the Plaintiff libels for Tithes, and the Defendant pleads that they were ſevered from the nine Parts by which they became a Lay Fee) is not within the Statute; becauſe it appears not that either the Plaintiff or the Judge knew that they were ſevered. *Hawk. Pl. Cro. Præmunire* 18, 19. 12 *Co.* 39, 40, 41.

6. *Anno* 25 *H.* 8. *Richard Nick*, Biſhop of *Norwich*, was attainted in a *Præmunire* at the Suit of the King, and his Caſe was ſhortly this, within the Town of *Thetford* in *Norfolk*, there was a Cuſtom, That all Eccleſiaſtical Cauſes, ariſing within that Town, ſhould be determined before the Dean there, he

he having a peculiar Eccleſiaſtical Juriſdiction, and that no Inhabitant of the ſame Town ſhould be drawn before any other Eccleſiaſtical Judge, and that every Perſon ſuing contrary to that Cuſtom, the ſame being preſented before the Mayor of *Thetford*, ſhould forfeit 6 *s.* 8 *d.* An Inhabitant in that Town, for an Eccleſiaſtical Cauſe ariſing within the ſame, ſued another before the Biſhop of *Norwich* in his Conſiſtory Court of *Norwich*, which was preſented before the Mayor, according to the ſaid Cuſtom, whereby he forfeited as aforeſaid. The Biſhop thought fit to cite the ſaid Mayor for taking this Preſentment *pro ſalute Animæ*, to appear before him at *his Lordſhip's Houſe at Hoxton* in *Suffolk*, (*another County than where the Fact was committed, and far diſtant from* Thetford, *where he was at that Time Mayor*) *to the Neglect not only of his own private Affairs, but to the general Delay of Juſtice in that Town*, where the Mayor appeared, and there the Biſhop *Ore tenus* injoined him, upon Pain of Excommunication, to remit the ſaid Preſentment, before a Day, for that Purpoſe, by his Lordſhip fixed; and for this Offence the Biſhop was attainted in a *Præmunire*, upon his Confeſſion, before *Fitz-James* Lord Ch. Juſt. and the Court of King's Bench, upon the Statute 16 *R.* 2. the Record whereof Lord *Coke* ſaid he had ſeen, and by this Judgment his Lordſhip obſerves two Points to be cleared. 1. That the Statute of *Præmunire* extends to Eccleſiaſtical Courts within the Realm. 2. That after the King was in Poſſeſſion of his Supremacy, the

Biſhop

Biſhop incurred the Danger of *Præmunire*. 3 *Inſt.* 121, 122. 12 *Co.* 37.

7. The Biſhop of *Bangor* was attainted in a *Præmunire*, for holding Plea of an Advowſon, and of Tithes ſevered from the nine Parts. 3 *Inſt.* 122.

8. *St. Germain* in his *Doct. & Stud.* written after the 26th of *Hen.* 8. holdeth, That if a Man make a Promiſe for a Temporal Thing and ſwear to perform it and doth it not, if he be ſued for Perjury in the Spiritual Court, a Prohibition or *Præmunire* lieth. 3 *Inſt.* 122. *Doct. & Stud. lib.* 2. *c.* 24.

9. The King, by Verdict of twelve Men, recovered Ten thouſand Marks, againſt the Biſhop of *Norwich*; for that he proſecuted againſt the Abbot of *St. Edmondsbury*, to appear before him, againſt the King's Prohibition; for which it was adjudged, That his Temporalties ſhould be ſeiſed, and his Body taken. 4 *Inſt.* 338.

10. *Brooke* reporteth, That *Barlow*, Biſhop of *Bath* and *Wells*, in the Reign of King *E.* 6. deprived the Dean of *Wells*, which Deanery was a Donative, and thereby incurred the Danger of a *Præmunire*. 3 *Inſt.* 122. Vide *Bro. Præmunire*, 21.

11. *Thomas Stoughton*, Parſon of *N.* in *Suffolk*, 29 *Eliz.* brought a Writ of *Præmunire* againſt *R. T.* upon the Stat. 27 *E.* 3. for ſuing in the Court of Audience of the Archbiſhop of *Canterbury* to impeach a Judgment given in a *Quare impedit* before the Juſtices of Aſſize, in the County of *Suffolk*, *&c.* The Defendant pleaded Not guilty, *&c.* 3 *Inſt.* 122.

3. *Inſtances*,

3. *Inſtances or particular Caſes of Suits to* Rome.

1. Bulls of Citation before the Statute of Proviſors was an heinous Offence; and ſo are Bulls of Proviſion and Exemption. *Poph.* 157.

2. In the Reign of *E.* 1. a Subject brought in a Bull of Excommunication againſt another Subject of this Realm, and publiſhed it to the Lord Treaſurer of *England*, and this was, by the antient Common Law of *England*, adjudged Treaſon againſt the King, his Crown and Dignity, for which the Offender ſhould have been drawn and hanged, but at the great Inſtance of the Chancellor and Treaſurer he was only abjured this Realm for ever. *5 Co. De Jure Regis Eccleſiaſtico* 12. *a. b. Poph.* 157.

3. King *E.* 1. preſented a Clerk to a Benefice within the Province of *York*, whom the Archbiſhop refuſed; for that the Pope by Proviſion had conferred it upon another; the King brought his *Quare non admiſit*, the Archbiſhop pleaded that the Biſhop of *Rome* had long Time before provided to the ſaid Church, as one having ſupreme Authority in that Caſe, and that he durſt not, nor had Power to put him out, who was, by the Pope's Bull, in Poſſeſſion; for which high Contempt againſt the King, his Crown, and Dignity, in refuſing to execute his Sovereign's Commands, fearing to do it againſt the *Pope*'s Proviſion, by the Judgment of the Common Law, the Lands of his whole

Biſhop-

Biſhoprick were ſeiſed into the King's Hands, and loſt during his Life: Which Judgment was before any Statute, or Act of Parliament made in that Caſe. And there it is ſaid, that for the like Offence the Archbiſhop of *Canterbury* had been in worſe Caſe by the Judgment of the Sages of the Law, than to be puniſhed for a Contempt, if the King had not extended his Grace and Favour to him. 5 *Co. De Jure Regis Eccleſiaſtico* 12. *b.* 13. *a.*

4. If one purchaſe from the Court of *Rome* a Citation againſt any Clerk or other directed to the Archbiſhop of *Canterbury*, or to any other to cite ſuch Perſon to appear before the Pope, *&c.* to anſwer for any Collation or Preſentation to any Benefice, or Prebendary; then the King's Writ of Prohibition ſhall go to the Archbiſhop, or other Perſon to whom ſuch Proceſs is directed, That he ſurceaſe to cite him, *&c.* and he may have another Prohibition to the Party himſelf, and an Attachment upon it, *&c.* *Fitzh. Nat. Br.* 44. I.

5. In the Reign of *H.* 2. This antient Law was reſumed, namely, That no Bull ſhould be brought from the Pope to be executed in *England*, on Pain of Impriſonment, and Confiſcation of Goods. *Dav.* 90, 91, 92.

6. In the ſame King's Reign (*inter alia*) this antient Law was revived, That it ſhould be adjudged High Treaſon, to bring in Bulls of Excommunication, whereby the Realm ſhould be accurſed. *Da.* 90, 91, 92.

7. The Biſhop of *Chicheſter* was proſecuted upon the Statute of Proviſors; for that, whereas it was ordained, That none ſhould draw

draw in Queſtion, out of the Realm, any Matter which belonged to the Crown, or to the King's Courts, he the ſaid Biſhop had cauſed to be ſummoned to the Court of *Rome*, *Edward*, Earl of *Arundel*, Sir *Edward St. John*, and others, out of the Realm, in a Plea which belonged to the Crown, *this was upon the Statute* 27 E. 3. and it was awarded that the Biſhop ſhould be put out of the King's Protection, and forfeit his Goods and Chattels to the King, but would adviſe whether his Body ſhould be taken, or not. *Paſ.* 25 *E.* 3. 7. *a. b.*

8. *Anno* 11 *H.* 4. 170, 213, 229. in the famous Caſe of the Biſhop of *St. David*, it is reſolved by *Thirning*, *Hankford*, and the better Opinion of the Books, That when a Prebendary of *Sarum* was elected to the Biſhoprick of *St. David*, and before he was created Biſhop, he obtained a Diſpenſation from the Pope to retain all his other Benefices, *non obſtante*, *&c.* and after is created and conſecrated Biſhop, that the King ſhall not have a *Quare impedit verſus* the Biſhop for the Prebend, nor an Action *ſur le Statute* 25 *E.* 3. which gives the Preſentment to the King, where the Pope by Proviſion gives any Benefice, whereof the Patronage belongs to the Spiritual Perſon; for in both Caſes it is neceſſary there be an Avoidance of the Benefice, before the King preſent; whereas in this Caſe the Church was never void, but the Incumbent continued in of his old Title; and therefore *Hankford* there ſaid, that the Biſhop upon this Diſpenſation to retain ſhould not pay Firſt-fruits again. And if the King hath the firſt and next Avoidance

of

of a Benefice, and after grant ſuch Faculty, or Diſpenſation, for the Incumbent to retain this Benefice, notwithſtanding that he ſhould be created a Biſhop, and after the Incumbent is made a Biſhop; yet it doth not amount to a Preſentation, but that after the Death of the Incumbent the King ſhall preſent another Clerk to it; for no Avoidance was before the Death of the Incumbent; but it was clearly reſolved in this Biſhop's Caſe, That if the Diſpenſation had been made after the Prebendary had been created Biſhop, That the Prebend had been void, and no Faculty could enable him to retain againſt the King. *Dav.* 77. *a. b.*

9. *Tempore H.* 6. *Henry Beaufort*, Great Uncle to the King, being Biſhop of *Wincheſter*, was made Cardinal; and after purchaſed from the Pope a Bull declaratory, that notwithſtanding he was made Cardinal, that his Biſhoprick of *Wincheſter* was not void; but that he might retain it, as before; yet it was held, that the See of *Wincheſter* was void by taking the Cardinalſhip, which exempted the Biſhop from the Juriſdiction of his Metropolitan; and therefore the Cardinal was in the Caſe of a *Præmunire*, for which he purchaſed the King's Pardon, which is to be found amongſt the Charters 4 *H.* 6. *in Archivis Tur. London.* Da. 77. b.

4. *Suits.*

1. *How proſecuted.*

It hath been reſolved by a Statute appointing that an Offender ſhall incur the

Penalty and Danger mentioned in the 16 *R.* 2. 5. does not confine the Proſecution for the Offence to the *particular Proceſs thereby given.* Hawk. Pl. Cro. Præmunire, Sect. ult. See *Ven.* 173.

2. *How puniſhed.*

1. The Offence of uſing Papal Bulls is made *Præmunire* by many antient as well as later Statutes, as Stat. 25 *E.* 3. called the Statute of Proviſors, That whoſoever ſhall, by a Papal Proviſion, diſturb any Patron to preſent to a Benefice, *&c.* ſhall be fined and impriſoned till he make full Renunciation, *&c.* and it is further enacted by 25 *E.* 3. *Stat.* 5 *E.* 2. 2. That if any one purchaſe a Proviſion, of an Abbey, or Priory, he ſhall be out of the King's Protection, and by 38 *E.* 3. and 12 *R.* 2. 15. and 13 *R.* 2. *Stat.* 2. *cap.* 2. That whoever ſhall accept a Benefice contrary to the 25 *E.* 3. ſhall be baniſhed, and by 13 *R.* 2. *Stat.* 2. *cap.* 3. That whoever ſhall bring a Sentence of Excommunication againſt any Perſon for executing the ſaid Statute 25 *E.* 3. ſhall ſuffer Pain of Life and Member; and by the 16 *R.* 2. *c.* 5. That whoever ſhall purchaſe, or purſue in the Court of *Rome, or elſewhere,* any Tranſlations, Proceſſes, Sentences of Excommunication, Bulls, Inſtruments, or other Things, contrary to the Tenor of that Statute, which touch the King, againſt him, his Crown, his Regalty, or his Realm, or bring them within this Realm, or receive them, *&c.* ſhall be out of the King's Protection,

tion, and their Lands, and Tenements, Goods, and Chattels, forfeited to the King, and they ſhall be attached by their Bodies, *&c.* and by 2 *H.* 4. 3. That whoever ſhall purchaſe from *Rome* a Proviſion of Exemption, from ordinary Obedience; and by 2 *H.* 4. 4. That whoever ſhall put in Execution Bulls purchaſed by thoſe of the Order of *Ciſteaux*, to be diſcharged of Tithes, ſhall incur the like Penalty, alſo Offenders of this Nature are further reſtrained by 6 *H.* 4. 1. 7 *H.* 4. 8. 9 *H.* 4. 8. 3 *H.* 5. 4. and it is further enacted by 23 *H.* 8. *c.* 21. *ſect.* 22. That whoever ſhall ſue for, or execute any Licence, Diſpenſation, or Faculty, from the See of *Rome*; and by 28 *H.* 8. 16. (by which Bulls, Briefs, *&c.* heretofore obtained from *Rome*, are made void) That whoever ſhall uſe, alledge, or plead, the ſame in any Court; unleſs they were confirmed by that Statute, or afterwards by the King, ſhall incur the like Penalty. Vide 2 *Lev.* 251. By 15 *Eliz.* thoſe who purchaſe any Bulls, *&c.* from *Rome*, *&c.* are guilty of High Treaſon; but thoſe antient Statutes ſtill remain in Force; and it is in the Election of the Crown to proceed either upon them or 13 *Eliz.* *as in Da. Caſe of Præmunire*, alſo by the ſaid Stat. 13 *Eliz.* Aiders, Comforters, and Maintainers of ſuch Offenders, after the Offence, to the Intent to uphold the ſaid uſurped Power, incur a *Præmunire*. *Hawk. Pl. Cro. Præmunire.*

2. As to how Offences of this Kind, *Præmunire*, ſhall be puniſhed, it is to be obſerved that moſt of the Statutes of *Præmunire* refer

reſer the Puniſhment to the Statute 16 *R.* 2. *c.* 5. which enacts, that thoſe who offend againſt the Purport thereof ſhall be put out of the King's Protection, and their Lands, and Tenements, Goods and Chattels, forfeited to our Lord the King: And that they be attached by their Bodies, if they may be found, and brought before the King and his Council; there to anſwer to the Caſes aforeſaid; or that Proceſs be made againſt them by *Præmunire facias*, in Manner as is ordained in other Statutes of Proviſors. *Hawk. Pl. Cro. Præmunire, Sect.* 45. Inaſmuch as this Statute expreſly ſaith, That the Offenders ſhall be out of the King's Protection, and alſo Stat. 25 *E.* 3. *Stat.* 5. *c.* 22. had further added, That any one might do with a Purchaſer of Proviſion, therein prohibited, as with the King's Enemies, and that he who ſhould offend againſt ſuch an one in Body, Lands, or Goods, ſhould be excuſed. It was formerly holden, That one attainted in a *Præmunire*, might lawfully be ſlain by any one as the King's Enemy, and out of the Protection of the Laws; but the later Opinion ſeems to have diſapproved of this Severity; however it is expreſly enacted by 5 *Eliz. Par.* 21, 22. That it ſhall not be lawful to kill any Perſon attainted in a *Præmunire*, *&c.* but however the Law may ſtand in relation to the Perſons within the Exception of this Act, it is certain that no Perſon whatſoever attainted of any *Præmunire*, can bring an Action for any Injury whatſoever; and that no one knowing him to be guilty, can with Safety give him Aid, Comfort, or Relief. *Hawk. Pl. Cro. Præ-*

munire, *Sect.* 45, 46, 47. Vide 1 *Inſt.* 130. 3 *Inſt.* 126, 128. 12 *Co.* 68. *Bro. Abr. Coron.* 197. *Stat.* 1 *Eliz.* 1. *Par.* 39.

3. By 16 *R.* 2. 5. both thoſe who ſhall purſue, or cauſe to be purſued in the Court of *Rome*, *or elſewhere*, any Proceſſes, or Inſtruments, or other Things whatſoever, which touch the King, againſt him, his Crown, and Regalty of his Realm, and alſo thoſe who ſhall bring, receive, notify, or execute them, they and their Abettors, *&c.* ſhall be put out of the King's Protection, *&c.* *Hawk. Pl. Cro. Præmunire* 15.

4. It hath been reſolved that thoſe general Words in the Statute 16 *R.* 2. 5. *That all Lands and Tenements ſhall be forfeited*, extend to Lands intailed, after the Death of the Offender. *Hawk. Pl. Cro. Præmunire*, *Sect.* 48. *Marg.* 1 *Inſt.* 130. 3 *Inſt.* 126. 2 *Lev.* 169. *vue les Livres*, & q.

3. *Defendants to be reſtrained by Writs Mandatory from defending there.*

If one ſue another on Title of Colluſion, to any Prebend out of the Realm, he may have his Prohibition, and the King ſhall have a mandatory Writ to him ſo ſued out of the Realm, commanding him upon Pain of Forfeiture of all which he can forfeit, that he go not out of the Realm, to anſwer it, of which the Cognizance belongs to the King's Court; and alſo the King may have a *Mandamus* to a Prebendary ſued out of the Realm, for Title of his Prebend, to prohibit him, on Pain of Impriſonment and For-

Forfeiture, *ut ſupra*, that he go not out the Realm, nor anſwer by his Procurator, or otherwiſe, &c. *Fitz. Nat. Br.* 44. H.

2. *For derogating from the Sovereignty, Authority, and Juriſdiction of the Superior Temporal Law and Courts.*

1. A. is ſued in the Spiritual Court for Maintaining that it is lawful for Secular Judges to convene before them and proceed againſt Clerks for Offences againſt the Peace, and that the Exemption of the Clergy from the Secular Juriſdiction, is not founded upon the Law of GOD: The Proſecutors and Abettors of this Suit incur a *Præmunire*, and ſo do the Judges of the Spiritual Court who retain the Cauſe. *Jenk.* 198.

2. If the Eccleſiaſtical Court excommunicate one for Treſpaſs or other Temporal Concern, a *Præmunire* lieth againſt both Judge and Party; for that the Crown may loſe great Advantage, which he might have had from ſuch Suits being in his Majeſty's Temporal Courts; and the Party is injured by being in ſuch Caſe, called before the Eccleſiaſtical Courts to anſwer before them of ſuch Things, as belong to the Laws of the Realm. *Doct. & Stud. lib.* 2. *cap.* 32. *Vide for holding Plea of Matters cognizable at Law.*

3. *Maintaining the Pope's Power.*

1. BY the Statute 1 *Eliz.* it is provided, That none ſhould by Printing, Writing, or Words, maintain or defend the Spiritual Juriſdiction of any foreign Prince, Prelate, *&c.* within this Realm, and that every ſuch Perſon being lawfully convicted by the Courſe of the Common Law, ſhould for the firſt Offence forfeit all his Goods and Chattels, and if ſuch Goods and Chattels ſhould not be worth 20 *l.* then he ſhould be impriſoned for a Year, *&c.* 4 *Inſt.* 331.

2. Maintaining the Pope's Power is made a *Præmunire* upon the firſt Conviction, and High Treaſon upon the Second. *Hawk. Pl. Cro. Præmunire, Sect.* 23.

3. *Tempore E.* 1. One of the King's Subjects bringing in a Bull of Excommunication againſt another Subject, the King commanded he ſhould be executed as a Traitor, according to the antient Law; but as that Law had not been of long Time put in Execution, the Chancellor and Treaſurer kneeled before the King, and obtained Grace for the Offender, ſo as he was only baniſhed. And as he adjudged it Treaſon to bring in Bulls of Excommunication, ſo he held it a high Contempt againſt the Crown, to bring in Bulls of Proviſion, or Briefs of Citation, and accordingly the Law was ſo declared *Anno* 25 of his Reign, which was the firſt Statute made againſt Proviſors. *Da.* 95. *a. b.*

4. If the Publiſhing a Bull of the Pope of Excommunication, againſt a Subject of this Realm

Realm was Treaſon at Law, as was adjudged in the Reign of *E.* 1. *à fortiori*, it muſt be Treaſon in the higheſt Degree to publiſh a Bull againſt the Sovereign and Monarch herſelf, as was that of Pope *Pius Quintus*, in Queen *Elizabeth*'s Reign, againſt her Majeſty, to withdraw the Queen's Subjects from their natural Loyalty and Allegiance to their Sovereign, and which ſo juſtly occaſioned the Statute which was enacted *anno* 13 of that Queen's Reign. Vide 5 *Co. fo.* 34, 35, 36, 37. *Vide Suing to the Court of Rome.*

4. *Maintaining Popiſh Seminaries.*

CONtributing to the Maintenance of a Popiſh Seminary is made a *Præmunire* by 27 *Eliz.* 2. *Par.* 6. *Hawk. Pl. Cro.* Title *Præmunire* 26.

5. *Receiving Books againſt the Religion of the Church eſtabliſhed.*

HE who receives Books which are written againſt the Religion eſtabliſhed in the Kingdom, and ſhews them to others with Comments of them, runs into a *Præmunire* by the Statute 4 *Eliz.* 4 *Leon.* 240.

6. *Bringing in* Agnus Dei's, &c.

1. THE bringing in *Agnus Dei's* is made a *Præmunire* by 13 *Eliz.* 2. *Par.* 7, 8.

by which it is enacted, That if any one ſhall bring into the Realm *Agnus Dei's*, Croſſes, Pictures, Beads, or ſuch like ſuperſtitious Things, pretended to be hallowed by the Biſhop of *Rome*, &c. and ſhall deliver or offer the ſame to any Subject *to be uſed or worn* in any wiſe; or if any one ſhall receive the ſame to ſuch Intent, and not clear himſelf by diſcovering the Offender, &c. he ſhall incur a *Præmunire*, and ſo ſhall a Juſtice of Peace in the ſame County, who having any Offence in that Act declared unto him, ſhall not declare it to a Privy Counſellor within ſixteen Days. *Hawk. Pl. Cro.* Tit. *Præmunire*, *Sect.* 24, 25.

7. *Refuſing to elect or conſecrate Biſhops*, &c.

THE Offence of Refuſing to elect or conſecrate the Perſon nominated by the King to a Biſhoprick is made *Præmunire* by the Statute of 25 *H.* 8. 28. by which it is enacted, That if any Dean and Chapter refuſe to elect the Perſon named in the King's Letters for a Biſhoprick, and to certify ſuch Election to the King within twenty Days after the Licence ſhall come to their Hands, or if any Archbiſhop, or Biſhop, after ſuch Election (or Nomination by the King in Default thereof certified unto them by the King) ſhall refuſe, within twenty Days, to confirm and conſecrate the Perſon ſo ſignified to them, they incur a *Præmunire*. *Hawk. Pl. Cro. Præmunire*, *Sect.* 22. 12 *Co.* 39.

8. *Exer-*

8. *Exerciſing the Juriſdiction of a Suffragan, without Authority.*

EXerciſing the Juriſdiction of a Suffragan without Appointment of the Biſhop of the Dioceſe is made a *Præmunire* by the Statute 26 *H.* 8. 14. which ſets forth at large for what Towns ſuch Suffragans may be nominated by the King to a Biſhoprick, and alſo how they may be nominated, conſecrated and commiſſioned. *Hawk. Pl. Cro. Præmunire, Sect.* 21.

9. *Intermeddling with Matters relating to religious Houſes.*

BY Statute 1 & 2 *Ph. & Mar.* Whoſoever ſhall by any Proceſs obtained out of any Eccleſiaſtical Court, within or without, the Realm, by Pretence of any Eccleſiaſtical Juriſdiction or otherwiſe, contrary to the Laws of the Realm, inquiet or moleſt any Perſon, *&c.* for any Manors, *&c.* Parcel of the Poſſeſſions of any Religious Houſes, *&c.* ſhall incur the Danger of the Act of *Præmunire*, in *Anno* 16 R. 2. See alſo the Statute 25 *H.* 8. which alſo hath Reference to the ſaid Act of *Præmunire*, 16 R. 2. 2 *Inſt.* 122.

10. *Maintaining the ſham Right of the pretended Prince of* Wales.

IT is enacted by the 6 *Annæ* 7. That if any Perſon ſhall malitiouſly and directly, by Preaching, Teaching, or adviſed ſpeaking, declare, maintain and affirm that the pretended Prince of *Wales* hath any Right or Title to the Crown of theſe Realms, or that any other Perſon or Perſons hath or have any Right or Title to the ſame, otherwiſe than according to 1 *Will. & Mar.* 2. and 12 *Will.* 3. & 2. And the Acts then lately made in *England* and *Scotland*, mutually for the Union of the two Kingdoms; or that the Kings or Queens of this Realm, with the Authority of Parliament, are not able to make Laws to limit the Crown and Deſcent, &c. thereof, ſhall incur a *Præmunire*. *Hawk. Pl. Cro. Præmunire, Sect.* 44.

11. *Refuſing the Oaths*, &c.

1. *General to them.*

1. REfuſing the Oaths is made a *Præmunire* by ſeveral Statutes; for by 1 *Eliz.* 1. *Par.* 19. it is enacted, That all Eccleſiaſtical Perſons, and all Eccleſiaſtical and Temporal Officers, and all Perſons having the King's Fees or Wages, and by *Par.* 26. That all Perſons taking Orders or any Degree within any Univerſity within this

this Realm, ſhall take the Oath of Supremacy, under Pain of loſing their Benefices and Offices; and it is further enacted by 5 *Eliz.* 1. *Par.* 5. That all Perſons abovementioned who are required by the ſaid Statute 1 *Eliz.* 1. to take the ſaid Oath, and all School-Maſters publick, and private, *&c.* ſhall take the ſaid Oath in open Court, before they ſhall be admitted to any ſuch Vocation, or Office, *&c.* and if they belong not to any ſuch Court, *Speaking of the Inns of Court, and Courts of Juſtice,* That then they ſhall take the ſame before ſuch Perſon as ſhall admit them to ſuch Vacation, *&c.* or before Commiſſioners appointed under the Great Seal, *&c.* And it is further enacted, *Par.* 6. That any Biſhop may tender the ſaid Oath to any Spiritual Perſon within his Dioceſe, as well in Places exempt, as others, and by *Par.* 7. That Commiſſioners may be appointed by the Lord Chancellor to tender the ſame to ſuch Perſons, as by their Commiſſion they ſhall be authorized to tender it to. And by *Par.* 8. That if any Perſon compelled by either of the ſaid Acts, or appointed by the ſaid Commiſſioners, to take the ſaid Oath, ſhall refuſe to take it on a Tender thereof, ſhall incur a *Præmunire*; and by *Par.* 9. That ſuch Refuſal ſhall be certified within forty Days before the King in his Court of King's Bench, by thoſe who have Authority to tender the ſaid Oath, under the Pennlty of One hundred Pounds, and that the Sheriff of the County wherein the ſaid Court ſhall ſit, may impanel a Jury, who ſhall inquire of ſuch Refuſal in ſuch Manner as if it had happened in the ſame County.

County. *Hawk. Pl. Cro. Præmunire*, Sect. 27.

2. By Stat. 3 *Jac.* 1. 4. *Par.* 13, 14. Any Biſhop, or two Juſtices of Peace, whereof one is to be of the *Quorum*, might tender the Oath of Obedience therein preſcribed to any Perſon above eighteen, being under the Degree of Nobility, and convicted or indicted of Recuſancy, or not having received the Sacrament twice in the Year paſt, and and alſo to any ſuſpected Stranger who ſhall not purge himſelf upon Oath; and ſhall certify the Names of ſuch, as take the ſaid Oath, to the next Quarter-Seſſions where the ſame ſhall be again tendred; and if the ſaid Perſons, or other Perſon whatſoever of the Age of Eighteen, other than Noblemen or Noblewomen, ſhall there refuſe, they incur a *Præmunire*, Femes Covert excepted, who ſhall be committed till they take it. By *Par.* 41. The Lords of Council, in like Manner, may tender the ſaid Oath to any Nobleman or Noblewoman, of the Age of eighteen, who on refuſing incur a *Præmunire*, Femes Covert excepted. By the Statute of the 7 *Jac.* 1. 6. *Par.* 2, 26, 27. All Perſons whatſoever, as well Eccleſiaſtical as Temporal, of what Eſtate, Dignity, Pre-eminence, Sex, Quality or Degree ſoever above Eighteen, being in that Act mentioned and intended, ſhall take the ſaid Oath; and any Privy Counſellor, or Biſhop, within his Dioceſe may require any Baron or Baroneſs of Eighteen, and any two Juſtices of the Peace, whereof one to be of the *Quorum*, may require any other Perſon of that Age to take it; and if any

Perſon

Perſon of or above the ſaid Age and Degree ſhall be preſented, &c. for not coming to the Church, &c. then three of the Privy Council, whereof the ſaid Chancellor, &c. to be one, ſhall require the ſaid Perſon to take the ſaid Oath. And if any Perſon of the ſaid Age, and under the ſaid Degree, ſhall be preſented, &c. for not coming to Church, &c. or if the Miniſter, &c. ſhall complain to any Juſtice of Peace, &c. and the Juſtice ſhall find cauſe of Suſpicion; then any one Juſtice of the Peace ſhall require ſuch Perſon to take the ſaid Oath, &c. and they refuſing, on Tender of the ſaid Oath, ſhall be bound over to the Aſſizes, or Seſſions, where if they refuſe again, they incur a *Præmunire*: And *Par.* 27. all ſuch Refuſers are diſabled to execute any Publick Place of Judicature, or bear any other Office, (being no Office of Inheritance or Miniſterial Function, or to practice the Common or Civil Law, &c. *Hawk. Pl. Cro. Præmunire, Sect.* 37, 38, 39.

2. By the 1 & 2 *W. & M.* the Oath of Supremacy and Obedience, preſcribed by theſe Acts, were abrogated, and another Oath and Declaration ſubſtituted in their Room, for the Form whereof, ſee *Hawk. Pl. Cro. Præmunire, Sect.* 41. And by *Par.* 3. 45. all Perſons required to take, or authorized to tender, the ſaid abrogated Oaths, or either of them, are in like manner required and authorized to take and tender the ſaid Oath and Declaration, under the ſame Penalty, &c. *Hawk. Pl. Cro. Sect.* 42.

2. *Con-*

2. *Conſtructions on the ſeveral Statutes and Certificates, &c.*

1. The Obligation to take the Oath continued after the Death of Queen *Elizabeth*, though the Statute doth not name her Succeſſors; and the like Reſolution hath been made in relation to the Oaths appointed by the ſubſequent Statutes. *Hawk. Pl. Cro. Præmunire, Sect.* 28. See *Raym.* 212. 1 *Ven.* 171. 2 *Keb.* 825.

2. In the Conſtruction of theſe Statutes it hath been reſolved that the Juſtices of Peace, *&c.* may ſend their Warrants, to bring ſuch Perſons before them; but they cannot authorize the Conſtable to break open the Doors to take them. *Hawk. Pl. Cro. Præmunire, Sect.* 40.

3. That in the Commiſſion Authorizing Perſons to tender the ſaid Oath, a general Deſcription of the Perſons, to whom to be tender'd, is ſufficient without Particularizing them by Name. *Hawk. Pl. Cr. Præmunire, Sect.* 29. See *Raym.* 445.

4. If the Perſon who tendred the Oath, as Biſhop, was not a Biſhop at the Time, the Defendant may give it in Evidence upon the general Iſſue. *Hawk. Pl. Cro. Præmunire, Sect.* 30. *vide Dy.* 234. *Pl.* 15.

Quære who a Biſhop to ſuch Intent.

5. The Oath muſt in Subſtance be taken in the very Words expreſſed in the Acts, and cannot be qualified with any Reſerve whatſoever: Yet it hath been reſolved, that to uſe the Word, Conſcience, inſtead of, *in my*

my Conſcience, or Sea of *Rome*, inſtead of, *See of Rome*, makes no material Variance. *Hawk. Pl. Cro. Præmunire*, *Sect.* 31. vide 1 *Bulſt.* 197, 198. 1 *Ven.* 172, 173.

6. The Certificate of Refuſal of the ſaid Oath made to the Judges of the Court of King's Bench by Name, and not to the King in his ſaid Court, is ſufficient, within the Meaning of the Statute. *Hawk. Pl. Cro. Præmunire*, *Sect.* 32. vide *Raym.* 445.

7. An Eccleſiaſtical Perſon is well deſcribed in ſuch Certificates, by the Addition of *Legum Dr. & Sacris Ordinibus Conſtitutus*, without adding *Clericus*, *&c. Hawk. Pl. Cro. Præmunire*, *Sect.* 33. vide *Dy.* 234. *Pl.* 15.

12. *For holding Plea of a Matter cognizable at Law.*

1. DErogating from the King's Common Law Courts was an high Offence even at Common Law, and is made a *Præmunire* by many Ancient Statutes; for by 27 *E.* 3. 1. & 38 *E.* 3. of Proviſors, if any Subject draw any out of the Realm, in Plea whereof the Cognizance pertains to the King's Court, or of Things, whereof Judgment be given in the King's Court, he ſhall be warned to appear, *&c.* in proper Perſon, at a Day containing the Space of two Months, at which, if he appear not, he and his Proctor, *&c.* ſhall be put out of the King's Protection, his Lands, and Chattels forfeited, his Body impriſoned and ranſomed at the King's Will, *&c. Hawk. Pl. Cro. Præmunire* 14.

2. When

2. When the Suit in the Spiritual Cou is of a Lay Matter, or *of any thing whic belongeth not to the Spiritual Court*, a *Præmu nire* lieth, as of Debt againſt Executors o ſimple Contract, or *pro Læſione Fidei*, on Pro miſe to pay 10*l.* at ſuch a Day. *Bro. Ab Præmunire* 16 *Dr.* & *Stud. lib.* 2. *c.* 24. *c.* 3

3. It was adjudged by the whole Court That a Suit in the Eccleſiaſtical Court withi the Realm for a Temporal Cauſe, was i the Caſe of a *Præmunire*. 3 *Inſt.* 120. Se 12 *Co.* 60, 61.

4. At a Convocation holden 22 *H.* 8. the King being by the Clergy acknowledged Supreme Head of the Church, after this (*viz.* 24 *H.* 8. it appears that the Stat. of *Præmunire* remained in Force againſt Eccleſiaſtical Judges, for holding Plea of Matters determinable at Law. See 3 *Inſt.* 121.

5. If the Spiritual Court excommunicate a Man for Debt, Treſpaſs, or other Matter belonging to the King's Crown, and to his Royal Dignity; in this Caſe the Spiritual Court exceedeth it's Power, in that they hold Plea of ſuch Matter, and the Party may, if he will, thereupon have a *Præmunire* againſt both the Party who ſued him, and the Judge; for by ſuch Means the King may loſe great Advantage which might grow to him, if Suits had been taken in his Courts according to his Laws, and the Party is injured by being called before the Eccleſiaſtical Court to anſwer before them of ſuch Things as belong to the Laws of the Realm. *Dr.* & *Stud. lib.* 2. *cap.* 32.

6. It was reſolved that he who ſued in the Eccleſiaſticrl Court for Forgery of a Will, or Teſtament, incurs a *Præmunire* becauſe the Party grieved might have his Remedy at Law. 3 *Inſt.* 121.

7. Where the Biſhop holds Plea of an Advowſon, of a fourth or third Part thereof, the Party Defendant may have a Prohibition, directed to him, in ſuch Form as in *Fitzh. Natura Brevium* 40 *D.* and another againſt the Party, that he follow not the ſame, and may have an Attachment if he do. *Idem.* And the King may have his Writ for himſelf, though the Plea be between two Common Perſons; for the Suit is in Derogation of his Crown, and the King may ſue an Attachment thereupon, if they will proceed, *&c.* and in the Time of Vacation of the Biſhoprick, the Prohibition ſhall be to the Guardian of the Spiritualties, *& ejus Officiali & Commiſſario. Fitzh. N. B.* 40 E. F.

8. The Biſhop of *Bangor* was attaint in *Præmunire* for holding Plea of an Advowſon, and of Tithes ſevered from the Nine Parts. 3 *Inſt.* 122. *Dr. & Stud. lib.* 2. *c.* 23.

9. In Caſe of one's chaſing in the Park or Chaſe, belonging to a Biſhoprick, in time of Vacation of the Biſhoprick, the Remedy is at Common Law by the King's Writ for the King, *&c. Fitzh. N. B. fo.* 112. G. H.

10. In Caſe of Debt on Simple Contract, if the Eccleſiaſtical Court interfere, a *Præmunire* lieth. *Litt. Bro.* 11. *Caſe* 57.

11. *Barlow* Biſhop of *Bath* and *Wells* in the Reign of *E.* 6. deprived the Dean of *Wells*, which Deanary was a Donative, and thereby

thereby incurred the Danger of a *Præmunire*. 3 *Inſt.* 122. Vide *Bro. Præmunire* 21. *See the Biſhop of Norwich's Caſe with the Mayor of Thetford, and many other Caſes.*

12. Where a Clerk ſues in the Court of *Rome*, tho' for a Spiritual Matter, where he might have Remedy in this Realm in the Court of his Ordinary, he is within the Caſe of a *Præmunire*; *car trahit in placitum extra Regnum. Bro. Abr. Præmunire*, 9.

2. *For holding Plea of Matters determinable in the Temporal Courts.*

1. *In Courts of Law.*

2. *In Courts of Equity.*

1. *At Law.*

1. *Of Chattels, Debts, Lay Fees,* &c.

1. IF the Vicar ſue the Parſon impropriate for Damages for felling Trees growing in *Cœmeterio*, a Prohibition ſhall be granted; becauſe if the Trees belong to him, he might have Treſpaſs at Common Law. *Mich.* 13 *Jac. B. R. Bellamy's Caſe, Prohibition* granted, *Rol. Abr. Præmunire fo.* 311. *Caſe* 2.

2. *Spendloe*, a *Norfolk* Parſon, ſued Sir *William Smith* of *Eſſex*, Executor of *Smith* the laſt Incumbent, in the Arches for Dilapidations, and (*inter al'*) there was a Queſtion about a Leaſe for Years, which was alledged to be taken by Sir *William Smith* in his own Name, but covinouſly, in Truſt for

for *Smith* the Parſon, on which they ſought to put Sir *William* to his Oath to anſwer concerning Covin, for which a Prohibition was granted, *quoad* examining him upon Oath concerning the Covin; for though the Original Cauſe belong to their Cognizance, yet the Covin and Fraud is Criminal, and the Avowing of it to be *bona fide* is puniſhable, both in the Star-Chamber, and by the penal Law of Fraudulent Gifts; and therefore not to be extorted out of himſelf by Oath: Alſo the Expoſition of the Statute 13 *Eliz. c.* 10. of Dilapidations, and what ſhall be Covin, or not, within that Law, reſts not in them to judge; but in the Courts of Common Law. *Hob.* 84.

3. The Church-Wardens of the Pariſh of *S.* libelled in the Spiritual Court againſt *J. S.* as Farmer of *D*; to contribute to the Repairs of their Pariſh Church, and alledged Parcel of the ſaid Farm to lie in their Pariſh and Parcel in the Pariſh of *W.* another Pariſh; and they alledge a Cuſtom of the Farmers of the ſaid Farm, time whereof, *&c.* to contribute to the Repairs of their Church for all the ſaid Farm, if the Defendant ſays, That Parcel of the Lands lies in the Pariſh of *W.* and that he and thoſe, *&c.* have uſed, time whereof, *&c.* to contribute for it to the Church of *W.* and not to the Church of *S.* and deny the Preſcription, this ſhall not be tried in the Eccleſiaſtical Court, but at Law; and therefore a Prohibition lies; for they may not try the Cuſtom in the Eccleſiaſtical Court, by which the Inheritance is to be perpetually charged; and yet it is but, in effect, a Denial of the Preſcription. *Trin.*

16 *Jac. B. R.* The Church-Wardens of *Stephenage* & *Green*, *Rol. Abr. fo.* 308. *Caſe* 20. *Note, as I conceive, a Prohibition would have gone in the preſent Caſe; not only for that the Eccleſiaſtical Court cannot try a Matter to bind an Inheritance, but alſo, as a Cuſtom or Preſcription comes in Queſtion, as well as that they may not try the Bounds of a Pariſh.*

4. The Court refuſed a Conſultation, tho' the Prohibition was really irregular; for that the Matter was upon a Cuſtom triable at Law, ſo that the Court Chriſtian was juſtly prohibited, though not in that due and preciſe Form it ought to have been. *Telv.* 129.

5. Baron and Feme are divorced in the Eccleſiaſtical Court, for Adultery, *a Menſa & Thoro & Mutua Cohabitatione*, and after the Feme ſues in the Eccleſiaſtical Court, for a Legacy given to her, and the Husband releaſes all Actions and this Suit, and all belonging to it, a Plea of this Releaſe is good, and a Prohibition ſhall go; if they will not allow the Plea; for in ſuch Caſe the Legacy is originally due to the Baron and Feme, and the Suit is for a real Intereſt; and therefore the Releaſe of the Husband will diſcharge it. 44 *Eliz. Stephens* & *Tott*, *Rol. Abr. Prohibition* 301, *Caſe* 11. *And, as I take it, alſo Equity would reſtrain the Eccleſiaſtical Court in ſuch Caſe, though they would allow the Plea, for that they want Juriſdiction to give an adequate and plenary Sentence, as they have not Power to lay any Terms on the Husband to make Proviſion for the Wife and Iſſue of the Marriage, &c. as Equity does, in ſuch Caſes, every Day; beſides, as this Caſe is put, the*

Suit

Suit below is improper, for Want of a proper Party, the Husband not being a Party, and the Wife in ſuch Caſe cannot ſue alone.

6. A Prohibition lies for ſuing on Collation of Scholars to a Grammar-School. *Fitz. Nat. Br.* 40. L.

7. Nota; *Per Opinionem Omnium Juſticiariorum Utriuſq; Banci*, That if one Deviſe that his Executor ſhall ſell his Land, and that his Daughter ſhall have ſo much for her Advancement, *& ſic de aliis*, and die, and the Executors ſell, but will not pay the Legacies, and the Daughter ſue in the Eccleſiaſtical Court; yet a Prohibition lieth, becauſe it is not a teſtamentary Legacy, but out of Lands, wherewith Court Chriſtian may not meddle. *Dy.* 151. *b.* Yet 2 *Co.* 4. ſeems of contrary Opinion, as the Moiety was Aſſets in the Hands of the Executors.

8. If *A.* gives a Legacy to *B.* and makes *C.* his Executor and dies, and then *C.* dies Inteſtate, and *D.* takes Letters of Adminiſtration to *C.* and then *B.* ſues *D.* as Adminiſtrator of *C.* for this Legacy, ſuppoſing *C.* when he was Executor to have waſted the Goods of *A.* a Prohibition lies, becauſe, by the Common Law, it was a perſonal Tort, for which the Adminiſtrator might not be charged. *Paſ.* 11 *Car.* 2. *B. R. Amend* and *Fotherby*, *per* two Juſtices againſt one, a Prohibition granted. *Ro. Abr. Prohibition* 298. O. 3.

9. One deviſes 20 *l.* to his Daughter, the Executor gives a 40 *l.* Bond, conditioned for the Payment of this 20 *l.* accordingly, the Daughter marries a Husband, who ſues

the Executor in the Spiritual Court, as for a Legacy, and the Executor pleads Payment, according to the Bond; and becauſe the Eccleſiaſtical Judge would not allow it, the Executor brought a Prohibition on Surmiſe of this Matter; and on Motion for a Conſultation, by *Gaudy*, *Fenner*, and *Yelverton*, Juſtices, the Surmiſe is good; for that the Executor by entering into Bond to the Daughter for Payment of the Legacy, hath extinguiſhed the Legacy, and hath made the 20 *l.* Deviſe, a Debt meerly at Common Law, and not ſuable in the Spiritual Court. *Yelv.* 39.

10. If a Suit be in the Spiritual Court by the Official of a temerarious Adminiſtration, by the Defendant of Goods of the Inteſtate, *&c.* a Prohibition lies; elſe they ſhould try the Property of Goods, where he might have had Trover and Converſion, determinable at Common Law. *Ro. Abr. fo.* 287. *Caſe* 53.

2. *Rules.* in

1. If one ſue out of the Realm for Debt, or other Matter, cognizable in the King's Court, a Prohibition and Attachment may be had therefore. *Fitz. Nat. Br.* 44. H.

2. Where one ſues in the Spiritual Court, in any Caſe where an Action may be had at Common Law, a Prohibition ſhall be granted. 1 *Bro. Abr.* 170. *Caſes* 6, 7.

3. If one be ſued in the Spiritual Court for any Matter which is remedial in the King's Courts, or if the Spiritual Court will hold Plea in any Caſe, where they, by the King's

King's Prerogative, and by the antient Cuſtoms and Uſages of the Realm, ought not to hold any Plea, a Prohibition lieth. *Doct. & Stud. lib.* 2. *cap.* 24.

4. The Eccleſiaſtical Court cannot, even by Charter, judge of Things of Temporal Cognizance; neither can ſuch Things be judged according to the Rules of the Civil, or Canon Law, which is *aliud examen*, and not competent to the Nature of Things of Common Law Cognizance, *&c. Hale's Hiſt. Law* 32, 33. and therefore *Mich.* 8 *H.* 4. *Rot.* 72. *coram Rege*, when the Chancellor of *Oxon* proceeded according to the Rule of the Civil Law, in a Caſe of Debt, the Judgment was reverſed in *B. R.* wherein the Principal Error aſſigned was; becauſe they proceeded *per Legem civilem, ubi quilibet Ligeus Dom. Regis ſui Angliæ in quibuſcunq; placitis & querelis infra hoc Regnum factis & emergentibus, de Jure tractari debet per Communem Legem Angliæ*; and although King *H.* 8. 14. *Anno Regni ſui*, granted to the Univerſity a liberal Charter to proceed according to the Uſe of the Univerſity, (*viz.*) by a Courſe much conformed to the Civil Law; yet that Charter had not been ſufficient to have warranted ſuch Proceedings, without the Help of an Act of Parliament; and therefore in the 13 *Eliz.* an Act paſſed, whereby that Charter was, in effect, enacted; and it is thereby, that at this Day they have a Kind of Civil Law Procedure, even in Matters that are of themſelves of Common Law Cognizance, where either of the Parties to the Suit are privileged. *Ha. Hiſt. Law*, 32, 33.

5. If a Man ſue for a Deviſe of Lands, &c. in the Spiritual Court, a *Prohibition* lies, but of perſonal Matters, *aliter*. *Fitzh. Nat. Br.* 43. N.

6. If one ſue in Court Chriſtian for a Chattel Debt, or Lay Fee, a Prohibition lieth to the Party, and another to the Judge, and alſo an Attachment *ſur ceo*. *Fitzh. Nat. Brev.* 40. A.

3. *Though* in Ordine ad Spiritualia.

Felony, or other capital Crimes, are not examinable in the Eccleſiaſtical Courts, no not for Purpoſes examinable, *even* there, as in Caſes of Deprivation; and therefore they may not originally examine ſuch a Crime to prove a Man *Criminoſus*, much leſs, when he is ſo proved in the proper Court, impeach the Sentence in a Court improper; but they may build a Sentence of Deprivation upon ſuch a Conviction, and they are bound by it, and it is dangerous for a Judge Eccleſiaſtical to come againſt it. *Hob.* 121.

4. *Boundaries of Pariſhes*, &c.

If a Suit be in the Spiritual Court to try the Bounds of a Pariſh, a Prohibition ſhall be granted, for they cannot try it. 14 *Jac. B. R. Fiſher* and *Chamberlayne*, reſolved *Hill.* 41 *Eliz. B. R.* between *Piper* and *Barnaby*, and a Prohibition was granted *Hill.* 13 *Jac. B. R.* between *Foſter* and *Hide* adjudged. *Ro. Abr.* 291. *Prohibition*, *Vide poſtea ſub Diviſion Matter*, *may not try the Bounds*

Bounds of Pariſhes. See alſo Tithes *poſtea*, ſee alſo *Cuſtom* and *Preſcription.*

5. *Where the Matter hath been determined at Law.*

1. If one recover his Preſentation by *Quare impedit*, and his Clerk is admitted and inſtituted, and another Clerk who claims the ſame *Advowſon by Proviſion* of the Pope, or in Court Chriſtian to avoid and amove the other Clerk, the Patron who hath recovered his Preſentation, *&c.* ſhall have a Prohibition to the Judge to ſurceaſe, *&c. Fitzh. Nat. Brev.* 42. C. D. E.

2. If a Biſhop pretending a Lapſe, and then the Patron preſents, and in a *Quare impedit* recovers, and has a Writ to the Biſhop, and before his Preſentee hath his Inſtitution ſealed, the Archbiſhop ſends his Inhibition that he ſhall not be inſtituted; and there upon the Arches Sentence that he ſhall not be inſtituted, a Prohibition ſhall be granted; for they may not try what was tried at Law before, and draw in Queſtion the Recovery; for at that Rate a Recovery at Law would be but of little Avail. *Hill.* 14 *Jac. B. R. Fletcher* and *Baker, per Curiam. Ro. Abr. Prohibition* 294. *Caſe* 15.

3. If one recover in a *Quare impedit* againſt the Incumbent, whereupon he brings Error *in Banco Regis*, where the Judgment is affirmed, and a Writ to the Biſhop granted, for the Recoverer, and by Force thereof his Clerk is admitted and inſtituted by the Biſhop, and after the Metropolitan

grants an Inhibition to the Archdeacon, not to induct him, a Prohibition may be granted; becauſe it appears apparently that it is for Delay, *Trin.* 15 *Jac. B. R. Murrey* and Sir *H. Wallop* for the Church of *Langhorn in Cornubia.* A Prohibition granted. *Ro. Abr.* 312. *Caſe* 1.

4. A Prohibition was granted from the Common Pleas to the Spiritual Court, upon Diſcharge of Payment of Tithes, in the Hands of the Abbot upon the Statute 31 *H.* 8. and on Iſſue joined the Cauſe was tried at Bar; and on full Evidence the Plaintiff was nonſuited, and a Writ of Conſultation awarded; and after the Conſultation the Plaintiff here pleaded the ſame Plea in Diſcharge of the Payment of Tithes in Court Chriſtian, which was alledged in the Prohibition, and which Plea the Spiritual Jūdge accepted, and proceeded to try the ſame there; and the Court was moved for the Parſon to have a Prohibition to the Spiritual Judge that he ſhould not admit of this Plea, which had been once tried here, and which meerly appertained to the Judges of the Common Law to determine, which was granted by the Court; for the Trial at the Common Law and the Conſultation upon it is final in this very Suit, and upon that Libel. *Hob.* 286. *Ro. Abr. fo.* 319. O. The ſame, or the like Caſe.

5. *Thomas Stoughton*, Parſon of *N.* in *Suffolk*, brought a *Præmunire ſur le Stat.* 27 *E.* 3. for ſuing in the Court of Audience of the Archbiſhop of *Canterbury*, to impeach a Judgment at Law given in *Quare impedit* before the Juſtices of Aſſize in *Suffolk*, the De-

Defendant pleaded Not guilty, &c. 3 *Inſt.* 122, 123. 1 *Co.* 139.

6. If a Parſon of a Church be outlawed, and the Benefit of the Outlawry be granted over to *J. S.* who receives the Tithes of the Pariſhioners, and then the Parſon ſues the Pariſhioners for the Tithes who plead the Outlawry againſt him, and the Grant over to *J. S.* the Farmer, a Prohibition lies here; becauſe it is a Matter of Record, which they may not try. *Mich.* 9 *Car. Bucley* and *Wright, per Curiam*, and a Prohibition granted accordingly to the Court of *York*. *Ro. Ab. Prohibition*, U. *Caſe* 17.

See *ante ſub hoc Tit.* N° 3. Though *in Ordine ad Spiritualia.*

6. *Where Suit pending both at Law, and in Equity, the Spiritual Court, at the ſame Time, for the ſame Matter.*

1. If one be ſued in the Common Pleas, and in Court Chriſtian, for the ſame Cauſe, on his Application he may have a Prohibition from the Common Pleas. But one may have a Prohibition out of the King's Bench or Chancery on Surmiſe, ſuggeſting that he is ſued in Court Chriſtian, for a Matter of Common Law Cognizance, or for a Temporal Cauſe, &c. tho' he be not really ſued in either of theſe Courts, or elſewhere, for any ſuch Cauſe. *Fitz. Nat. Br.* 43. G. H.

2. If one ſue a *Quare impedit*, and deliver it of Record, as he may, and the Defendant, or his Clerk, ſue a Citation againſt the Plaintiff's Preſentee, the Plaintiff ſhall have

have a *Prohibition* in the Common Pleas before the Return of the Writ of *Quare impedit*; for that it appears of Record ſuch *Quare impedit* is pending. *Fitzh. Nat. Br.* 43. I.

7. *Where the Party is ſued in the Eccleſiaſtical Court for Acts done in the Temporal Courts.*

1. Men are ſworn to give Evidence on a certain Inqueſt, and do ſo; whereupon certain Perſons *are* indicted, if they who are ſo indicted ſue the Evidence in Court Chriſtian for Defamation, a Prohibition ſhall go. *Fitz. Nat. Br.* 42. F. See 12 *Co.* 43.

2. If *A.* ſue *B.* in the Eccleſiaſtical Court, for ſaying ſhe lived incontinently with *C. B.* ſhall have a Prohibition, upon Suggeſtion that he was produced before a Juſtice of Peace, where he gave Evidence that the ſaid *C.* had confeſſed to him, that *A.* lived incontinently with him; for it was but as Evidence. *Paſ.* 11 *Jac. B. R. Berry* and *Miles*, a Prohibition granted. *Ro. Abr. Prohibition, fo.* 303. *Caſe* 3. See 12 *Co.* 43.

3. If a Man be indicted in a Leet *ſur le Statute* of Drunkenneſs, and *J. S.* gives Evidence there againſt him, that he was drunk; whereupon he ſues *J. S.* in the Eccleſiaſtical Court, a Prohibition lieth. *Mich.* 12 *Jac. Anfield* and *Feveril. Ro. Abr. Prohibition*, R. *Caſe* 7. See 12 *Co.* 43.

4. If a Man be indicted for Keeping a Bawdy-Houſe, and for this the Party libel in the Court Chriſtian, a Prohibition lies. *Mich.*

Mich. 10 *Jac. B. R. Ro. Abr. Prohibition*, R. *Caſe* 6. See 12 *Co.* 43.

5. The Rule is, *Quod non eſt Juri Conſonum quod quis pro aliis quæ in Curiis noſtris acta, quorum Cognitio ad nos pertinet, trahitur in placitum in Cur. Chriſtian'.* 12 Co. 43.

Vide poſtea The Matter, In Caſes of Slander, who may ſue for and alſo, by whom ſpoken, Men of Profeſſion.

8. *Though the Court granting the Prohibition, &c. hath not Juriſdiction of the Matter in Suit, nor can determine the ſame.*

1. *General.*

1. If a Man ſue before the Pope's Collector (who hath Power given him by a Bull from the Pope to hold Plea) for a Matter Spiritual, which belongs to the Ordinary to determine, though the Temporal Courts may not hold Plea of it, yet a Prohibition lies; becauſe the King hath Judges Spiritual who have Juriſdiction to determine Spiritual Matters: As Archbiſhops and their Officers, Deans, and other Miniſters, and other Conſervators of Privileges, as *St. John's of Jeruſalem*, and others. 2 *H.* 4. 10. The Vicar of *Saltaſhe*'s Caſe adjudged. *Ro. Abr. Prohibition* 313. *Caſe* 6.

2. Though the Court hath Power both of the Will and the Matter demanded, yet in its original Nature the Will it ſelf was Temporal, as appears by 2 *R.* 3. *Teſtament* 4. and Things which go in Abridgment

ment of the Common Law ſhall be taken ſtrictly, and ſhall not be favoured in Conſtruction; ſo that Revocation, being a Matter meerly collateral to the Will it ſelf, remains at Common Law, *quoad* the Proof, as in the Caſe 1 *R.* 3. where one bequeaths a Horſe to *J. S.* and after delivers the ſame Horſe to *J. D.* with his own Hands, in ſuch Caſe, if *J. S.* ſue in Court Chriſtian for this Horſe, as a Legacy, and the other plead the Teſtator in his Life-time actually gave him the Horſe, this Plea is triable in the Spiritual Court; for by common Intendment the Judge there will do Right; yet if the Judge Eccleſiaſtical will not allow ſuch Proof as the Common Law allows, a Prohibition ſhall go; and yet the Common Law cannot determine the Thing in Demand; but yet may, *nay, ought*, to inhibit the Judge till he ſubmit himſelf to the Allowance of ſuch Proof as would ſatisfy the Common Law. *Yelv.* 92, 93. *Fi. Ley* 28.

3. The Court of King's Bench; and the Law is *the ſame of the other Courts of Weſtminſter*, of Matters whereof it ſelf cannot hold Plea, yet may well prohibit the Eccleſiaſtical and other inferior Courts, from holding Plea of Matters, whereof they have not Cognizance; for this Court is to take Cognizance of all other inferior Courts, and correct all Errors and Proceedings in them; and by Lord *Coke*, if a Codicil be by Parol the Spiritual Courts are compellable to add it to the Will. *Vide Stat.* 4 *H.* 4. *cap.* 23. *Cro. Jac.* 346. *Vide Cro. Jac.* 350. *Sid.* 65. 1 *R.* 3. 4. *Palm.* 293. *Doct. & Stud. lib.* 2. *cap.* 24, 25.

2. *Yet*

2. *Yet in ſome Caſes the Temporal Courts will allow theſe Courts to hold Juriſdiction of Matters of which they have not* in ſtricto Jure Cognizance *on Account of the Aptneſs of the Remedy, which the Eccleſiaſtical Courts in ſuch Caſes apply or give.*

1. A Prohibition was moved for to the Spiritual Court on Suggeſtion he was ſued there for forging Letters of Ordination when the Fact was, he was ſued in order to Deprivation *Quia mere laicus*, wherefore the Court would not grant a Prohibition. 1 *Sid.* 217. 1 *Lev.* 138. *le meſme Caſe.*

Trin. 1727. *Banco Regis. Townſend* and *Thorpe.*

2. In this Caſe the Court refuſed a Pro- * hibition where it was prayed to ſtay Proceedings in the Eccleſiaſtical Court, where they were going on to deprive the Plaintiff of the Office of a Pariſh-Clerk, for Sodomy, and the Grounds of the Court's refuſing the Motion was, for that it was, as the Court ſaid, unfit that a Man ſhould be ſuffered to remain in ſuch Office, who was guilty of ſo great a Piece of Beſtiality, and they the rather rejected the Motion; for that the Temporal Courts had no Way of Depriving him, and they ſaid they grounded themſelves upon a like Caſe. *Leo.* 138. where a Prohibition was moved for and refuſed to ſtay the Spiritual Court from proceeding to deprive one for forging Orders.

Mich. 7 *Geo.* 2. *B. R. The King* and *The Biſhop of Litchfield and Coventry.*

3. In

* 3. In this Caſe *Ruſhworth*, Uſher of th Grammar-School at *Coventry* had applied t this Court for a *Mandamus* to licence him t this Place, he having been then lately dul elected thereto. To this *Mandamus* the Bi ſhop returned, that he never utterly refuſe but only ſuſpended granting his Licence till he ſhould receive Satisfaction touchin the Morals and Inſufficiency of the Party, an then the Return ſet forth ſome Charges of Im morality in this Uſher, others of his Defamin and Quarreling in the Church and Church yard with his Pariſhioners, (he being thei Parſon) his Exceſs in Drinking, and hi being guilty or ſuſpected of being guilty o a lewd Behaviour; the Court refuſed a pe remptory *Mandamus*, and that the Retur ſhould be allowed. See Caſe *Buck* and *At wood*, *B. R. Paſch.* 1727. *Newcomb* an *Higgs*, *B. R. Hill.* 4 *Geo.* 2. *And yet I ſub mit it the Canons in the preſent Caſe did no bind* Ruſhworth, *though a Clergyman, no being in* Re Eccleſiaſtica, *but as the Eccle ſiaſtical Court was proceeding to deprive him if ſo criminal as was alledged, it was a Pu niſhment adequate and proportionable to hi Offences; ſo the Temporal Courts would no reſtrain the Eccleſiaſtical from applying thei Remedy, which was ſo proper and equal, eſpe cially, as they the Temporal Court had not or dinary Remedy of their own, or not ſo ſuitabl and well adapted to the particular Caſe.*

9. *For holding Plea of Matters cognizable in any of the inferior Temporal or other Courts.*

1. *As Peculiars, and other like Juriſdictions.*

1. If any Orphan, which is by Cuſtom of *London* under the Government of the Mayor and Aldermen, ſue in the Spiritual Court, or Court of Requeſts, for any Goods, Money, or Chattels due by the Cuſtom of *London*, or for a Deviſe or Legacy, Prohibition lieth; becauſe that the Government of Orphans belongs to the Mayor, *&c.* 5 *Co. Orphan's* Caſe, *fo.* 73. *b.* *Ro. Abr. Prohibition, fo.* 313. *Caſe* 2. So if the Council of the *Marches of Wales* hold Plea of an Eccleſiaſtical Matter, which belongs to the Prerogative Court, *&c.* though the Temporal Court may not give Remedy yet a Prohibition lies, and they may grant it. *Paſ.* 7 *Jac. Drinkwater's* Caſe, *Ro. Abr. Prohibition, fo.* 313. *Caſe* 3.

2. If an Executor or Adminiſtrator of Goods, within the Government of the Court of Orphans of *London*, be ſued in the Eccleſiaſtical Court, to do any Thing againſt the Cuſtom of the Court of Orphans, to impugn this Cuſtom, a Prohibition lieth. *Ro. Abr. Prohibition, fo.* 313. *Caſe* 4.

3. If a Parſon in *London* ſues for Tithes of an Houſe by the Stat. 37 *H.* 8. in the Eccleſiaſtical Court, a Prohibition ſhall go, though they may not hold Plea of it; for the

the Juriſdiction of this Suit belongs to the Mayor of *London*; for the Statute hath ſo expreſly limited it to be ſued there. *Mich.* 16 *Jac. Dr. Googe* and *Bond*, Prohibition granted. So again *Mich.* 5 *Jac. Bell* and *Moyle*, *Ro. Abr. Prohibition*, *fo.* 313. *Caſe* 5.

4. A Prohibition may be granted by the *Court of Common Pleas*, to the Court of Delegates, for ſuing there to avoid an Inſtitution of a Clerk to a Church in *Lancaſhire*, after Induction of him to it, though the *Quare impedit* for this Church may not be brought there, but only in the County of *Lancaſter*, becauſe that the Title of the Advowſon is not to be queſtioned by this Prohibition, but the Intruſion upon the Common Law, whereof this Court hath ſpecial Care, and it is to be reſtrained, *&c. Ro. Abr. Prohibition*, *fo.* 317. (H). *Caſe* 4. See *Hob.* 15, 16.

5. If a Suit be in the Eccleſiaſtical Court of *Cheſter to avoid an* Inſtitution after the Clerk is inducted to any Benefice within the County Palatine of *Cheſter*, though it be within the County Palatine, and ſo the King's Writ doth not run there; and though the Common Law Courts, within the County Palatine, might grant a Prohibition; yet a Prohibition may be granted here in the King's Bench; for it is but to reform the Uſurpation which they make upon the Common Law. *Mich.* 12 *Jac.* Sir *Timothy Hutton* and *The Biſhop of Cheſter. Per Cur. Ro. Abr. Prohibition*, *fo.* 318. *Caſe* 6. *Vide poſt Admiſſion*, *Inſtitution*, *and Induction*, where to be tried, *ceſt Caſe.*

6. The Church-wardens of *Rigwell* in *Eſſex* preſented to the Archdeacon, That one *Pannell* was a Railer and Sower of Diſcord between Neighbours, the Archdeacon injoined him *Purgation*, and the Court awarded Prohibition; for the Cauſe belongs to the Leet, and not to them, except in the Church, or the like. *Hob.* 246, 247.

7. A Prohibition lies where the viſitatorial Right is invaded. *Gilb.* 181. *Show. Parl. Caſes* 51. 4 *Mod.* 112. *Stillingfleet Caſes* 413.

2. *In Equity.*

1. *In General.*

1. Chancery is a Court of State. 1 *Chan. Caſes* 124. It is the Oracle of Equity. *Elſem. Obſ.* 21, 22. *Doct. & Stud.* 43. It is to judge according to Conſcience. *Elſem. Obſ.* 46 to 56. 3 *Chan. Caſ.* 47. It is the Refuge of the Poor. *Elſ. Obſ.* 115. It can do no Wrong. 2 *Chan. Caſ.* 217. The Equity of Chancery ſhall controul the Courts of Law, and alſo, *à fortiori*, the Eccleſiaſtical Courts. 1 *Chan. Caſ.* 201.

2. It is a fundamental Court antient as the Kingdom. *Hob.* 63.

3. It is the general Conſcience of the State. *Bacon's Readings on the Stat. of Uſes*, *fo.* 9, 13. It is the King's Court of Conſcience. *Elſem. Obſerv.* 29.

4. *Æquitas eſt Rerum convenientia quæ Paribus Cauſis paria Jura deſiderat*, and the Law of Equality and Proportion is the moſt

equal and juſt Law, and moſt conſonant to Reaſon. *Hard.* 209.

5. Chancery hath an original Juriſdiction, or at leaſt, a concurrent one with the Spiritual Courts, as in the Caſe of Legacies, Probates, *&c.* *Gilb. Rep.* 1.

6. Chancery will reſtrain the Juriſdiction of inferior Courts, as are the Courts Spiritual. 1 *Chan. Caſ.* 203.

7. The Lord Keeper declared, That the Judges of the Eccleſiaſtical Courts were as ſubject to the Equity of Chancery, as Judgments in the Common Law Courts. *Nelſon's Reports in Chancery of Caſes in Lord Nottingham's Time, fo.* 434. 1 *Chan. Caſ.* 201. *Gilb.* 208.

* 8. If the Court of Chancery, ſee that the Exerciſe of the Juriſdiction of a Surrogate be to an Infant's Prejudice, where the Adminiſtration is but a limited one, as *Durante Minoritate*, and the Adminiſtrator but a Truſtee for the Infant, it is Incumbent on Chancery to interfere and take Care that the Infant be not prejudiced in ſuch Caſe, eſpecially where the Adminiſtration was, as my Lord Chancellor ſaid, in the principal Caſe, it had been granted in a careleſs Manner, and where it was incumbent on the Surrogate to have taken Care; as the Eſtate was conſiderable, the Adminiſtration ſhould have been granted to a reſponſible Perſon, and not to a poor and indigent one, as was in the Principal Caſe. *In Canc. Havers* and *Havers*, 1 *May* 1740.

2. *Where*

2. *Where the Eccleſiaſtical Courts have no Juriſdiction, but the only Relief is in Equity.*

1. If one ſue in the Eccleſiaſtical Court for a Legacy, and the Defendant there ſays, That the Legacy was given on Condition that he would not diſturb the Execution of the Will, and alledged that he hath diſturbed him, and ſo Condition broken; if they will not allow ſuch Condition upon the Legacy, yet no Prohibition ſhall go; becauſe a Legacy is given by the Eccleſiaſtical, and there's no Remedy in our Law; and for as much as it is due by the Eccleſiaſtical Law, it ought to be ordered and allowed according to that Law, and the Executor, who is to pay it, has no Remedy but in Chancery, by Way of Equity. *Mich.* 13 *Jac. Wilſon* and *Wilſon*, agreed *per Cur'*, and Prohibition denied; but it was denied partly; becauſe it did not appear to the Court, whether this Plea was there diſallowed, or not. *Ro. Abr. Prohibition*, (Q.) *Caſe* 1.

2. Upon a Suit for a Legacy in the Eccleſiaſtical Court, and the Defendant there ſays, it was *ſur* Condition that the Plaintiff, being a Woman, ſhould marry no Man *ſans* the Conſent of his Executor, and that ſhe had married *J. S.* without ſuch Conſent, and ſo the Condition broken, and though they diſallowed this Condition there, yet no Prohibition ſhall be granted; but he is drove to his Remedy in Chancery. *Mich.* 15 *Jac.* *in Wilmer's* Caſe by *Winch* and *Warburton*,

and *Winch* ſaid, he had known it adjudged. *Ro. Abr. Prohibition*, (Q.) *Caſe* 2. *And here I conceive comes in all the Learning concerning Fortunes or Portions on Condition, and where the ſame are to be taken in Terrorem, &c. and where not, &c. Ideo vide* 1 *Chan. Caſes* 22. *Nelſon* 234. 1 *Chan. Caſ.* 58, 141, 142, 138, 140. 2 *Chan. Caſ.* 1, 23, 95. *Nelſon* 95, *&c.* 145, 234, 236, 183, 244, 261. 1 *Vern.* 20. *Skin.* 285. *Gilb.* 26. *Pre. Ch.* 348. *Gilb.* 27. 1 *P. Will.* 626. and *Caſe, Greydon* and *Hicks in Canc.* 7 *Dec.* 1739. *and Caſes cited in that Caſe.*

3. This Caſe was upon *Engliſh* Bill *in Scacc.* where the Teſtator made his Will, and the Defendant Executor, and after declared it to be his Will, That the Plaintiff ſhould have a Bond of 100 *l.* which he owed the Teſtator, after the Teſtator's Death the Defendant proved the Will, but not this Codicil; and thereupon the Plaintiff ſued him in the Eccleſiaſtical Court to compel a Probate of the Codicil, pending which Suit, the Defendant ſued the Bond, and the preſent Bill was brought for Relief, and to have Benefit of this Bequeſt, and to ſtay Proceedings at Law; on Hearing, *per Curiam*, no Relief here, for the Legacy before the Codicil proved; and this is no proper Court to prove it in; but it appertaineth to the Eccleſiaſtical Court, and Common Law has nothing to do with it; but where the Eccleſiaſtical Court cannot determine, which in the preſent Caſe they may, but when the Codicil is proved and made Part of the Will, then it will be proper for this Court to give Relief againſt the Bond; by

by Reaſon of the Legacy, but not before; but for that the Matter was not determined in the Eccleſiaſtical Court, the Court continued the Injunction till the Hearing there, and Lady *Swinnerton*'s Caſe in Chancery was cited. *Hard.* 96, 97.

4. A Man gives Lands to be ſold for Payment of Debts, or diſpoſeth of the Money to ſeveral Perſons, it cannot be ſued for in the Eccleſiaſtical Courts, but only in a Court of Equity; becauſe it is not a Legacy meerly of Goods and Chattels, but ariſeth originally out of Lands and Tenements, and they have a teſtamentary Juriſdiction touching Chattels only. *Gilb.* 208. See *Hob.* 365. 2 *Rol.* 285.

5. *Philip Edwards*, Executor of *Philip Edwards*, had a Prohibition againſt *John Graves*; and the Caſe was, One *Agnes Salter* deviſed the Teſtator, and three others ſhould ſell certain Lands, and ſhould diſpoſe of the Money ariſing to the Defendant and three others equally; the Land was accordingly ſold, and the now Defendant ſued the Executor in Court Chriſtian for the fourth Part of the Money. The Court held that neither Land, nor Money, were teſtamentary, as this Caſe is; for it was not Aſſets to Debts, but a Sum ariſing out of Lands, and appointed to ſpecial Uſes in Way of Equity, and not as a Legacy; and therefore it is not to be ſued for in the Eccleſiaſtical Court, but in a Court of Equity, neither can that Court hold Plea of a Legacy in Equity, but where it is a Legacy in Law indeed; for they muſt hold Plea by their Law, as our Courts of Law do. *Hob.* 265. 2 *Ro.* 285. *Gilb.* 208.

* 6. The Prerogative Court hath not Power to order Money to be brought into Court, or to direct the ſame, when it is brought in, to be placed out at Intereſt. *See in the Caſe Andrews and Powis, before the Houſe of Lords.* 2 Feb. 1723.

3. *Where Suits pending at the ſame Time, for the ſame Matter, both in Equity and in the Eccleſiaſtical Court.*

1. An Infant Legatee ſues in the Eccleſiaſtical Court, and after in Chancery, the Suit pending in the Eccleſiaſtical Court cannot be pleaded in Bar, for there's no ſuch Security there, for the Infant's Advantage, as there is in Chancery; eſpecially as to Intereſt, and bringing in an Account. 2 *Chan. Caſ.* 85.

2. An Injunction was granted to the Eccleſiaſtical Court, becauſe the reſt of the perſonal Eſtate was in Queſtion in Chancery before. *Skin.* 287.

4. *Where the Eccleſiaſtical Courts have not Juriſdiction of the whole Matter, or cannot give ſuch full Relief, Direction and Order therein, as Equity can.*

1. *In Caſe of Infants.*

1. A Man makes his Infant Son his Executor, and during his Infancy, he appoints two other Guardians to the Infant, and by the ſame Will, he alſo makes two Supervi-

ſors,

ſors, and deviſes certain Legacies, out of the Profits of certain Lands, to be paid at certain Days, and appoints alſo by the Will, that the Guardians ſhould enter into a Bond to the Superviſors to pay the Legacies at the Days appointed by the Will; in a Suit in the Eccleſiaſtical Court to compel the Guardians to enter into the Bond, they ſay, they cannot raiſe the Legacies out of the Lands, by the Days fixed, and this Plea is refuſed, a Prohibition ſhall be granted. *Trin.* 16 *Jac. Walkenden's* Caſe, *Ro. Abr. Prohibition, fo.* 300. *Caſe* 5.

2. *In Caſes of Guardians and Infants.*

1. *As to Matter of Intereſt-Money, and giving Security.*

1. The Spiritual Court cannot oblige a Guardian to pay Intereſt for the Infant's Money in his Hands, though they will compel him to give Security; but Equity will do both; and therefore will injoin the Spiritual Court in ſuch Caſes. *Prec. Ch.* 547.

2. The Father got admitted in the Spiritual Court Guardian to his Children, and ſues there for a Subtraction of Legacies given to his two Daughters, being Infants, here an Injunction *ex Canc.* for that the Eccleſiaſtical Courts can only compel Guardians to give Security, but not Intereſt; but Chancery can do both; and Mr. *Mead* cited a Caſe, where laſt Seal the Court granted an Injunction to ſtay the Husband's Proceedings in the Spiritual Court, for a Lega-

cy to his Wife; becauſe the Eccleſiaſtical Court could not oblige the Husband to make an adequate Proviſion or Settlement, on his Wife, as this Court would before they would permit him to receive the Money, and ſaid, the Caſe was Stronger in the Caſe of an Infant, in Reſpect of Security for his Benefit which carried Intereſt, and that the leaſt Security this Court required was a Recognizance, with two Sureties, which affected the Land. *Prec. Ch.* 546. Vide *Nelſon* 3, 136. *Gilb.* 173, 174, 175. *Fitzh. Nat. Br.* 232. 4 *Co.* 126. *Prec. Ch.* 137.

3. *In Caſes of Baron and Feme.*

1. *To compel an adequate Settlement on the Feme*, &c.

1. The Court of Chancery granted an Injunction to ſtay the Husband's Proceedings in the Spiritual Court for a Legacy given to his Wife; becauſe that Court could not oblige the Husband to make an adequate Proviſion or Settlement on his Wife, as Chancery would, before they would permit him to receive the Legacy. *Prec. Ch.* 548.

2. The Husband is not to meddle with the Feme's Fortune, without making Proviſion, and in the mean Time the Intereſt is to be received by the Baron and Feme, for the Maintenance of her and Children. *Nelſ.* 146. See 362, 377. *Gilb.* 1, 26, &c. 140. *Prec. Ch.* 22, 248, &c. *Eccleſiaſtical Court where injoined. Prec. Ch.* 456. 1 *Vern.* 40. *Skin.* 110, 289.

2. *Alimony.*

2. *Alimony.*

1. The Spiritual Court has no original and proper Juriſdiction of Alimony, but only incidentally, and conſequentially, when and where they hold Plea of divers Matters, where they have proper Juriſdiction; and if it had, yet the Chancery has a concurrent Juriſdiction, as with the Admiralty and other Courts, in Caſes peculiar to their Juriſdiction, and there being Truſt Money over which the Court has a Power, they decreed the Money to be laid out, with the Lady's Conſent, in a Purchaſe, and ſettled according and purſuant to the Articles, and the Intereſt in the mean Time to be paid her ſo long as ſhe lived ſeparate. *Prec. Ch.* 239, 240.

2. By Marriage-Articles 6000 *l.* the Wife's Portion, was to be veſted in the Purchaſe of Lands to be ſettled on the Husband for Life, then on the Wife for Life, and to lie in the Bank till Purchaſe; but before the Purchaſe made, the Wife, by the Husband's ill Uſage of her, was forced to leave him; and by the Direction of the Court, ſhe had the Intereſt allowed her in the Nature of Alimony. *Prec. Ch.* 239. 2 *Vern.* 493.

3. The Husband and Wife came to an Agreement for her ſeparate Maintenance, they being extreamly unhappy together, through an Unſuitableneſs of Temper, and the Agreement was decreed, though ſhe might have ſued for Alimony in the Spiritual Court; for it was to prevent that Expence, &c. *Prec. Ch.* 496. *Gilb.* 152.

4. In

4. In Caſes of Separation between Huſband and Wife, the Court will decree her a Maintenance in Nature of Alimony. 1 *Rep. Chan.* 44, 164, 186, 224. *Eq. Abr.* 67. 1 *Vern.* 53. 1 *Chan. Caſ.* 250. *Gilb.* 152. *Prec. Ch.* 239, 456. *Eq. Abr.* 98. 1 *Rep. Chan.* 223, 187. 2 *Vern.* 211. 3 *Rep. Chan.* 1. 1 *Rep. Ch.* 164, 44, 186, 26, 60, 68. 3 Vol. 8, 91, 223. 2 Vol. 416. 1 *Vern.* 53, 244, 245.

4. *As to the Perſonal Eſtate.*

1. *To go in Exoneration of the Real.*

1. Sir *Edw. Bathurſt* by his Will gave his perſonal Eſtate to his Wife, and made her Executrix; *per Curiam*, ſhe takes as Executrix, and the perſonal Eſtate is to be applied in Exoneration of the Real. *Wilkinſon, the Six Clerk his Caſe cited*, 1 *Vern.* 302.

2. The Perſonal Eſtate to go in Aid of the Heir to diſcharge Mortgages. 2 *Chan. Caſ.* 59, 84. *Nelſon* 342, 353. *Gilb.* 164.

3. Though the Lands are really charged, yet the Perſonal Eſtate is to be applied in Aid, unleſs there be an expreſs Clauſe in the Will to except it. *Nelſon* 342, 343, 351, *&c.* 414, 416. *Gilb.* 72, 73, 125.

4. The Perſonal Eſtate is the natural Fund to pay Debts. *Gilb.* 129. 2 *Chan. Caſ.* 84. *Nelſon* 414, 342. *Prec. Ch.* 101. *Vide plus Gilb.* 164, 72, 73, 125. *Prec. Ch.* 2, 3, 183, 209. 1 *Rep. Ch.* 48. *Eq. Abr.* 295, 296. 2 *Rep. Chan.* 377. 3 *Rep. Chan.* 206 to 214. 3 *Rep. Chan.* 190, *&c.* *Salk.* 159.

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